

Seton Hall University

eRepository @ Seton Hall

---

Student Works

Seton Hall Law

---

2024

## Amending New Jersey's Expungement Law to Reflect the Historical Treatment of Juveniles: Juveniles Deserve a Second Chance

Jair D. Bodnar

Follow this and additional works at: [https://scholarship.shu.edu/student\\_scholarship](https://scholarship.shu.edu/student_scholarship)



Part of the [Law Commons](#)

---

### Recommended Citation

Bodnar, Jair D., "Amending New Jersey's Expungement Law to Reflect the Historical Treatment of Juveniles: Juveniles Deserve a Second Chance" (2024). *Student Works*. 1462.

[https://scholarship.shu.edu/student\\_scholarship/1462](https://scholarship.shu.edu/student_scholarship/1462)

# Table of Contents

<b>Introduction</b> .....	1
<b>I. A Review of the Historical Treatment of Juvenile Offenders and the Lack of Effective Collateral Relief for Ex-Juvenile Offenders.</b> .....	6
A. The Purpose of Juvenile Courts. ....	7
1. Juvenile Courts Seek to Rehabilitate Troubled Youth, not Provide a Lifetime Punishment. ....	7
2. Juvenile Court’s Purpose Overrides the Need for Constitutional Safeguards—Constitutional Decisions Impacting Juvenile Rights from 1966 to 2023.....	13
B. A Review of New Jersey’s Expungement and Sealing Statute. ....	17
1. A Review of the Expungement Statute in 2023. ....	17
2. The History of Amendments in New Jersey’s Expungement Statute and its Related Sealing Precursor.....	23
C. An Overview of Other State’s Expungement and Sealing Laws. ....	27
1. States with Broad Expunction Remedies. ....	28
2. States with Narrow or No Remedial Remedies.....	33
3. New Jersey’s Expungement and Sealing Statute Differs from Other State’s Remedial Remedies. ....	36
<b>II. Analyzing the Issues Presented from a Logical and Doctrinal Perspective.</b> .....	38
A. From a Logical Standpoint: Children Neither Have the Same Mental Capacity nor Culpability as Adults. ....	38
1. The Issue of Wrongful Adjudications. ....	42
2. The Minority Community Mostly Suffers from the Stigmatizing and Detrimental Impact of a Juvenile Record.....	48
B. From a Doctrinal Perspective: the Current Interpretation of New Jersey’s Expungement Statute Contradicts the Remedial and Rehabilitative Goal. ....	51
1. New Jersey’s Legislature Should Replace the Statutory Expungement Bar with a Discretionary Alternative. ....	51
2. The Proposed Effective “Second Chance” Doctrine of Expungement as an Alternative Option.....	55
<b>III. Demonstrating the Effectiveness: the Proposed Solution of Allowing Discretionary Expungement for Crimes Committed as a Juvenile is Consistent with the Treatment and Understanding of Juveniles—Doctrinally, Scientifically, and Morally.</b> .....	56
<b>Conclusion</b> .....	60

## Introduction

Suppose you committed a “bad act” under the age of eighteen, which would otherwise constitute a “crime” if committed by an adult. More specifically, you were immature, and under significant peer pressure, you had forcibly taken another person’s belongings. You were later charged and pled guilty to robbery<sup>1</sup> in juvenile court, resulting in an adjudication of “delinquent.”<sup>2</sup> This is undoubtedly a mistake, and you have not received any further delinquent adjudications or adult convictions.

Fast forward, you are now twenty-five years old. As a result of this offense, you have a delinquent adjudication on your criminal record. To avoid a stigmatizing effect, you petition for expungement to remove the robbery adjudication from your record. Your expungement petition is automatically denied solely on the face of the petition and without a substantive review. Why? Because New Jersey’s expungement statute includes a statutory bar, which restricts the offenses eligible for expunction no matter if it is committed as a juvenile<sup>3</sup> or as an adult.<sup>4</sup> Is there any other collateral relief available? The only other feasible<sup>5</sup> alternative, which is less effective,<sup>6</sup> is to

---

<sup>1</sup> Robbery is one, among many offenses, in New Jersey that are ineligible for expungement. N.J. STAT. ANN. § 2C:52-2(b) (2016). It is, therefore, used to demonstrate the injustices resulting from the juveniles being restricted in the class of offenses eligible for expunction.

<sup>2</sup> N.J. STAT. ANN. § 2A:4A-23(a)-(c) (2011) (“[D]elinquency’ means the commission of an act by a juvenile which if committed by an adult would constitute: a. [a] crime; b. [a] disorderly persons offense or petty disorderly persons offense; or c. [a] violation of any other penal statute, ordinance or regulation.”).

<sup>3</sup> § 2A:4A-22(a) (“‘Juvenile’ means an individual who is under the age of 18 years.”).

<sup>4</sup> § 2C:52-2(a).

<sup>5</sup> For purposes of this Article, I will not explore the possibility of a governor pardon because of the minimal pardons that are granted. *50-State Comparison: Expungement, Sealing & Other Record Relief*, COLLATERAL CONSEQUENCES RES. CTR. RESTORATION OF RTS. PROJECT, (Oct. 2021), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>.

<sup>6</sup> § 2C:52-27(c); *New Jersey v. W. J. A.*, 412 A.2d 1355, 1356 (N.J. Super. Ct. Law Div. 1980) (“[T]he remedy of expungement is far more effective than sealing in destroying all traces of contact with the criminal justice system.”).

request the court to “seal” your juvenile delinquency record from public disclosure, which ultimately could be revealed in limited circumstances.<sup>7</sup>

Traditionally, society has sought ways to rehabilitate juveniles who commit “bad acts” or crimes rather than impose punitive consequences.<sup>8</sup> For over a century, courts have demonstrated that juveniles who commit crimes should not be subject to the same treatment as adults for numerous reasons.<sup>9</sup> That said, a juvenile<sup>10</sup> offender should be able to enter adulthood without a lifetime haunting stigma resulting from a past juvenile delinquency record. It is well-known that the danger of having a criminal record comes with the perception of suspicion and mistrust, affecting individuals socially and economically.<sup>11</sup> Similarly, a juvenile record attaches collateral consequences, leading to “difficulties accessing educational services such as student loans, obtaining employment, finding and maintaining housing, and entering and serving in the military,” as well as restrictions on civil disabilities.<sup>12</sup> The solution to this problem is to permit discretionary juvenile expunction—allowing for the removal of all juvenile records that were committed under the age of eighteen.

---

<sup>7</sup> § 2A:4A-60(f).

<sup>8</sup> See § 2A:4A-21.

<sup>9</sup> *Roper v. Simmons*, 543 U.S. 551, 573 (2005) (“It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.”); *Miller v. Alabama*, 567 U.S. 460, 472 (2012) (“[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because “[t]he heart of the retribution rationale” [concerns] an offender’s blameworthiness, “the case for retribution is not as strong with a minor as with an adult.” (citations omitted)).

<sup>10</sup> The term “juvenile” will be used interchangeably with “minor” throughout this Article, meaning a person under the age of eighteen.

<sup>11</sup> Hyla, Eric, *The Long-Term Economic Impact of Juvenile Criminal Activity*, THE PARK PLACE ECONOMIST: Vol. 24 (2016) <https://digitalcommons.iwu.edu/parkplace/vol24/iss1/17>.

<sup>12</sup> Andrea R. Coleman, *Expunging Juvenile Records: Misconceptions, Collateral Consequences, and Emerging Practices*, NAT’L CTR. FOR JUVENILE JUST., U.S. DEP’T OF JUST., at 3, (Dec. 2020), <https://ojjdp.ojp.gov/publications/expunging-juvenile-records.pdf>.

Generally, “expungement”<sup>13</sup> is the process when criminal records are removed, making them nonexistent or unavailable to the public.<sup>14</sup> Expunction “ha[s] a twofold purpose: incentivizing rehabilitation by promising a second chance and helping the already rehabilitated reenter their communities by removing otherwise existing barriers.”<sup>15</sup> Expungement is a significant relief for ex-offenders involved with the criminal justice system, especially juvenile offenders.<sup>16</sup> Every state has a variation of expungement statute, either limited or expansive.<sup>17</sup> A limited expungement statute minimizes the number of offenses available for expungement.<sup>18</sup> By contrast, a broad expungement statute allows for a more comprehensive class of offenses to be expunged, even sometimes qualifying felony offenses.<sup>19</sup>

Terms such as expungement, sealing, and confidentiality are often mistakenly used interchangeably when referring to destroying or sealing juvenile records.<sup>20</sup> But these are three different legal methods of handling records.<sup>21</sup> Expungement statutes generally “require states to permanently destroy records, expunge police and court records or court records only, expunge most juvenile offenses, and expunge by a certain age.”<sup>22</sup> Sealing statutes typically “require[]

---

<sup>13</sup> BLACK’S LAW DICTIONARY defines *expungement of record* as “the removal of a conviction (esp. for a first offense) from a person’s criminal record.” *Expungement of Record*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>14</sup> Carlton J. Snow, *Expungement and Employment Law: The Conflict Between an Employer’s Need to Know About Juvenile Misdeeds and an Employee’s Need to Keep Them Secret*, 41 WASH. U. J. URB. & CONTEMP. L. 3, 21-22 (1992) (“There is no uniform terminology in the world of expungement statutes. The process is variously described as expungement, erasure, destruction, sealing, setting aside, expunction, and purging.”).

<sup>15</sup> Brian M. Murray, *Retributive Expungement*, 169 U. PA. L. REV. 665, 681 (2021).

<sup>16</sup> *Expungement: Criminal Records as Reentry Barriers*, NAT’L INS. OF JUST. (2022), <https://nij.ojp.gov/topics/articles/expungement-criminal-records-reentry-barriers>.

<sup>17</sup> Adam H. RosenBlum, *Clearing Criminal Records: Ranking the States from Toughest to Easiest*, ROSENBLUM LAW, <https://rosenblumlaw.com/data/clearing-criminal-records-ranking-the-states-from-toughest-to-easiest/>, (describing New York as having the toughest expungement statute, whereas Wisconsin falls on the other end of the spectrum) (last visited Jan. 18, 2023).

<sup>18</sup> Some states, such as Colorado, California, and Wisconsin, allow for a limited list of expungements of felony offenses. Other states, such as Oregon, Washington, Utah, and Nevada, have a longer list of felonies that are eligible for expungement.

<sup>19</sup> *50-State Comparison: Expungement, Sealing & Other Record Relief*, *supra* note 5.

<sup>20</sup> Coleman, *supra* note 12, at 3.

<sup>21</sup> Coleman, *supra* note 12, at 3.

<sup>22</sup> Coleman, *supra* note 12, at 3.

states to make juvenile records available to specific agencies and individuals but unavailable to the public.”<sup>23</sup> Confidentiality statutes prohibit “dissemination, access, or use of juvenile records.”<sup>24</sup>

New Jersey provides two methods<sup>25</sup> to restrict public access to juvenile delinquency records: (1) an expungement statute<sup>26</sup> and (2) a juvenile sealing statute.<sup>27</sup> New Jersey defines “expungement” as “the extraction, sealing, impounding, or isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person’s detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.”<sup>28</sup> The effect of expungement is that the expunged offenses are “deemed not to have occurred.”<sup>29</sup> The “primary objective” of New Jersey’s expungement statute is to

provid[e] relief to the one-time offender who has led a life of rectitude and disassociated himself with unlawful activity, but not to create a system whereby periodic violators of the law or those who associate themselves with criminal activity have a *regular* means of expunging their police and criminal records.<sup>30</sup>

Despite the statute’s primary objective, it limits the offenses eligible for expunction by imposing a statutory bar.<sup>31</sup> Like New Jersey, most states also provide a statutory bar to particular offenses, depriving the judge of the opportunity to determine whether an individual has

---

<sup>23</sup> Coleman, *supra* note 12, at 4.

<sup>24</sup> Coleman, *supra* note 12, at 4.

<sup>25</sup> For purposes of this Article, I will not explore the possibility of a governor pardon because of the minimal pardons that are granted. *50-State Comparison: Expungement, Sealing & Other Record Relief*, *supra* note 5.

<sup>26</sup> N.J. STAT. ANN. § 2C:52-4.1.

<sup>27</sup> N.J. STAT. ANN. § 2A:4A-62.

<sup>28</sup> § 2C:52-1.

<sup>29</sup> § 2C:52-27.

<sup>30</sup> *In re D.J.B.*, 83 A.3d 2, 6 (N.J. 2014) (citing § 2C:52-32); *In re Kollman*, 46 A.3d 1247, 1254 (N.J. 2012) (“In other words, the statute is designed to eliminate ‘the collateral consequences imposed upon otherwise law-abiding citizens who have had a minor brush with the criminal justice system.’” (quoting *In re T.P.D.*, 648, 715 A.2d 1048, 1051 (N.J. Super. Ct. Law Div. 1997), *aff’d o.b.*, 715 A.2d 994 (N.J. Super. Ct. App. Div. 1998))).

<sup>31</sup> § 2C:52-5.1.

successfully rehabilitated and is thus eligible for a second chance.<sup>32</sup> That is, specific offenses cannot be expunged whether they were committed as a juvenile or as an adult.<sup>33</sup>

New Jersey also has a “sealing” statute that provides an alternative way to restrict the public’s access to juvenile delinquency records.<sup>34</sup> The effect of “sealing” is that the delinquency record is marked as “not available” or “no record.”<sup>35</sup> An ex-juvenile offender may request the court to seal their juvenile records, but the court may also disclose the delinquency records in limited circumstances.<sup>36</sup> Law enforcement officers, however, are directed to reply to any inquiry that there is no record for the person, except if the record is requested “for purposes of prior offender status, identification and law enforcement purposes.”<sup>37</sup>

This Article will focus on the difficulties ex-juvenile offenders face when seeking expungement of their juvenile records to prevent collateral consequences. Specifically, I will argue that a person under the age of eighteen should not be subject to the same statutory expungement bar as adults when seeking an expungement in New Jersey. Although New Jersey offers juveniles a sealing option, that option is inadequate to protect the interests of juveniles. Also, it fails to allow them to avoid the harsh consequences of their youthful errors. I will, therefore, propose an amendment to New Jersey’s expungement statute to include a discretionary

---

<sup>32</sup> § 2C:52-2(b).

<sup>33</sup> *Id.* (explaining that the following crimes cannot be expunged: criminal homicide, kidnapping, luring or enticing, human trafficking, sexual assault or aggravated sexual assault, aggravated criminal sexual conduct, criminal sexual conduct, criminal restraint, false imprisonment, robbery, arson and related offenses, endangering the welfare of a child by engaging in sexual conduct which would impair the moral of the child, photographing or filming sexual acts involving children, possession or distribution depicting sexual exploitation or abuse of a child, perjury, false swearing, terrorism, and producing or possessing chemical weapons or devices).

<sup>34</sup> N.J. STAT. ANN. § 2A:4A-60.2.

<sup>35</sup> § 2A:4A-62(d) (“Inspection of the files and records included in the order may thereafter be permitted by the court only upon motion and only to those persons named in the motion; provided, however, the court, in its discretion, may by special order in an individual case permit inspection by or release of information in the records to any clinic, hospital, or agency which has the person under care or treatment or to individuals or agencies engaged in fact-finding or research.”).

<sup>36</sup> § 2A:4A-60.2.

<sup>37</sup> § 2A:4A-62(d).

alternative for offenses committed as a juvenile.

Before understanding why the proposed amendment of discretionary juvenile expunction is necessary, it is first essential to understand the historical treatment of minors who commit crimes. That said, Part I will discuss and review the historical treatment of juvenile offenders and New Jersey's expungement statute applicability to juvenile offenders. Part II then proposes a solution to the issue, which explores a balancing test, allowing discretion in granting expungement to juvenile offenders. This balancing test requires an amendment to the statute to include a subsection excluding juvenile offenders from the statutory bar. Under the balancing test, courts would consider a number of factors to determine whether the individual has successfully rehabilitated and whether it would be in the community's best interest to grant the expungement. The amendment, therefore, would provide the following bright-line rule: a person may expunge the entirety of their juvenile record—all offenses committed under the age of eighteen—if the individual can demonstrate rehabilitation and it is in the public's interest to grant the expungement. Lastly, Part III applies the proposed solution to reveal its necessity and effectiveness.

### **I. A Review of the Historical Treatment of Juvenile Offenders and the Lack of Effective Collateral Relief for Ex-Juvenile Offenders.**

To adequately address the injustices juveniles face with expungement laws, we must begin with the history of punishing juveniles accused of crimes. After understanding how juvenile offenders were historically treated, this Article will review various expungement statutes and their effectiveness on the reformation and rehabilitation of juveniles.



## A. The Purpose of Juvenile Courts.

The development of the juvenile justice system over the past century revolved around rehabilitation.<sup>38</sup> Before 1899, minors accused of crimes were treated the same as adults.<sup>39</sup> That year, the first juvenile court was available to adjudicate juvenile delinquents in Cook County, Illinois.<sup>40</sup> By 1925, all but two states had developed juvenile courts, focusing on the goal of rehabilitation.<sup>41</sup> Shortly after, New Jersey followed and established its first juvenile court in 1929 “with the primary goal of rehabilitating juveniles.”<sup>42</sup> By 1945, all states established juvenile courts.<sup>43</sup>

### 1. Juvenile Courts Seek to Rehabilitate Troubled Youth, not Provide a Lifetime Punishment.

The purpose of rehabilitation has remained consistent since the establishment of the first juvenile court.<sup>44</sup> Society has recognized and accepted that juveniles are not criminally minded; instead, they are less mature and less aware of the consequences of their actions.<sup>45</sup> Juvenile courts, therefore, classify juveniles as “delinquent” rather than “criminal.”<sup>46</sup> States have expressly stated that the disposition of “delinquent” should not receive the same perception,

---

<sup>38</sup> *History and Development of the Juvenile Court and Judicial Process*, SAGE PUBL’N INC 19, 21 (Feb. 16, 2008, 12:39 PM), [https://www.sagepub.com/sites/default/files/upm-binaries/19434\\_Section\\_I.pdf](https://www.sagepub.com/sites/default/files/upm-binaries/19434_Section_I.pdf).

<sup>39</sup> *In re Gault*, 387 U.S. 1, 14 (1967); A.B.A. DIV. FOR PUB. EDU., *The History of Juvenile Justice*, in DIALOGUE ON YOUTH AND JUSTICE, 4, 4 (2007), [https://www.americanbar.org/content/dam/aba/administrative/public\\_education/resources/DYJfull.pdf](https://www.americanbar.org/content/dam/aba/administrative/public_education/resources/DYJfull.pdf) [hereinafter “ABA”].

<sup>40</sup> ABA, *supra* note 39, at 5.

<sup>41</sup> Charles Puzzanchera, Sarah Hockenberry & Melissa Sickmund, *Youth and the Juvenile Justice System: 2022 National Report*, NAT’L CTR. FOR JUV. JUST. 77 (Dec. 2022), <https://ojjdp.ojp.gov/publications/2022-national-report.pdf/>.

<sup>42</sup> *Juvenile Crimes*, Sussex County, <https://www.sussex.nj.us/cn/webpage.cfm?tpid=1665> (last visited Mar. 30, 2023).

<sup>43</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 21.

<sup>44</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 25.

<sup>45</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 24.

<sup>46</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 24.

treatment, and collateral consequences as the disposition of “criminal.”<sup>47</sup> Put simply, a juvenile adjudicated “delinquent” is not the same as an adult “criminal” conviction.<sup>48</sup> Consistent with the rehabilitation theory, adjudicated delinquents are thought to require treatment to rehabilitate successfully<sup>49</sup> rather than a punitive disposition.<sup>50</sup>

In shaping the juvenile justice system, states have developed juvenile courts under the theory that juveniles are not equivalent to adults who commit crimes. In doing so, juveniles are distinguished from adults in the following ways: (1) the absence of legal guilt, (2) the goal of treatment rather than punishment, (3) providing informal and private proceedings rather than open to the public, (4) focusing on the family dynamic and social background when imposing dispositions, (5) imposing shorter terms of imprisonment for juveniles, (6) using distinct terminology, and (7) providing juveniles with limited constitutional guarantees.<sup>51</sup>

First, “in practically all jurisdictions, statutes provide that an adjudication of the child as a delinquent shall not operate as a civil disability or disqualify [them] for civil service appointment.”<sup>52</sup> A civil disability is “a condition of a person who has had a legal right or privilege revoked as a result of a criminal conviction. A convicted criminal may be imposed with numerous civil disabilities apart from the sentence that is imposed upon him/her on

---

<sup>47</sup> N.J. STAT. ANN. § 2A:4A-48 (“No disposition under this act shall operate to impose any of the civil disabilities ordinarily imposed by virtue of a criminal conviction, nor shall a juvenile be deemed a criminal by reason of such disposition.”); *In re J.B.*, 45 A.3d 1014, 1017 (N.J. Super. Ct. App. Div. 2012).

<sup>48</sup> *J.B.*, 45 A.3d at 1017.

<sup>49</sup> § 2A:4A-21 (“Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public.”).

<sup>50</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 58.

<sup>51</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 58.

<sup>52</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 58.

conviction.”<sup>53</sup> Some legal rights include the right to serve on a jury, the right to vote, the right to run for public office, and the right to possess any firearm.<sup>54</sup>

The New Jersey legislature has explicitly stated in its Code of Juvenile Justice<sup>55</sup> (“the Code”) that the disposition of juvenile “delinquent” is not to be interpreted as the same as “criminal” and should not impose any civil disability as an adult criminal conviction would.<sup>56</sup> The Code’s purpose, among many others, is “to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public.”<sup>57</sup> Despite its purpose, the term delinquent “has come to involve only slightly less stigma than the term ‘criminal’ applied to adults.”<sup>58</sup>

Second, juvenile courts have always sought to rehabilitate juveniles and protect communities from immature delinquent acts.<sup>59</sup> Juvenile courts emphasize the purpose of rehabilitation, whereas the purpose of the adult court is punishment.<sup>60</sup> Historically, society viewed children’s bad behavior as a result of a breakdown in the familial dynamic, not because the minor had the requisite *mens rea* to commit crimes.<sup>61</sup> Society believed the solution resided in

---

<sup>53</sup> *Civil Disabilities*, USLEGAL.COM, <https://definitions.uslegal.com/c/civil-disabilities/> (last visited Jan. 17, 2023); BLACK’S LAW DICTIONARY defines *civil disability* as “[t]he condition of a person who has had a legal right or privilege revoked as a result of a criminal conviction, as when a person’s driver’s license is revoked after a DWI conviction.” *Civil Disability*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>54</sup> *What Rights Do Convicted Felons Lose?*, THE LAW DICTIONARY, <https://thelawdictionary.org/article/what-rights-do-convicted-felons-lose/> (last visited Apr. 12, 2023).

<sup>55</sup> *New Jersey in the Interest of T.C.*, 184 A.3d 932, 935 (N.J. Super. Ct. App. Div. 2018) (“The Code governs juvenile delinquency matters. It ‘empowers Family Part courts handling juvenile cases to enter dispositions that comport with the Code’s rehabilitative goals.’” (quoting *In re State ex rel. C.V.*, 990 A.2d 640, 647 (N.J. 2010))).

<sup>56</sup> N.J. STAT. ANN. § 2A:4A-21.

<sup>57</sup> §§ 2A:4A-21(b), (e) (providing “that children under the jurisdiction of the court are wards of the [s]tate, subject to the discipline and entitled to the protection of the [s]tate, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them”).

<sup>58</sup> *Gault*, 387 U.S. at 24.

<sup>59</sup> § 2A:4A-21(b); *Schall v. Martin*, 467 U.S. 253, 264 (1984).

<sup>60</sup> *J.B.*, 45 A.3d at 1018; *W. J. A.*, 412 A.2d at 1354; *Pennsylvania v. Fisher*, 62 A. 198, 201 (Pa. 1905).

<sup>61</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 24.

other methods to reform a child’s immoral behavior, such as engagement with social workers, out-of-home placements, psychologists, probation officers, and many others, not by punishing the minor.<sup>62</sup>

Third, juvenile courts are entirely distinct from adult courts. Juvenile delinquency hearings are often more informal than adult court.<sup>63</sup> They usually occur in family court<sup>64</sup> and are often viewed as “civil” rather than “criminal.”<sup>65</sup> Delinquency hearings are generally not open to the public.<sup>66</sup> Interestingly, there has been a trend toward opening delinquency hearings to the public.<sup>67</sup> “In 2019, there were 24 states with statutes allowing delinquency adjudication hearings to be generally open to the public. In the remaining 26 states and the District of Columbia, the public is restricted from attending delinquency adjudication hearings, although there may be limited exceptions.”<sup>68</sup> Most hearings occur in the judges’ chambers<sup>69</sup> and typically involve the judge, child, guardians, attorneys, and probation officer.<sup>70</sup> Often, the privacy and procedures of

---

<sup>62</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 24 (“[S]ocial workers, probation officers, and psychologists took the place of lawyers and prosecutors.”).

<sup>63</sup> *Main Differences Between Adult and Juvenile Criminal Court*, JARED JUST. (Oct. 7, 2019), <https://www.jaredjustice.com/blog/main-differences-between-adult-and-juvenile-criminal-court/>.

<sup>64</sup> § 2A:4A-22(i) (“‘Court’ means the Superior Court, Chancery Division, Family Part unless a different meaning is plainly required.”).

<sup>65</sup> *Gault*, 387 U.S. at 17 (“[P]roceedings involving juveniles were described as ‘civil’ not ‘criminal’ and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.”).

<sup>66</sup> § 2A:4A-60(i)(1) (“[T]he court may, upon application by the juvenile or his parent or guardian, the prosecutor . . . news media, permit public attendance during any court proceeding at a delinquency case, where it determines that a substantial likelihood that specific harm to the juvenile would not result.”).

<sup>67</sup> *Youth and the Juvenile Justice System: 2022 National Report*, *supra* note 41, at 93.

<sup>68</sup> *Youth and the Juvenile Justice System: 2022 National Report*, *supra* note 41, at 93.

<sup>69</sup> *Gault*, 387 U.S. at 16 (“These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as *parens patriae*.”).

<sup>70</sup> § 2A:4A-21(i)(1)-(2). To make certain:

a fairer and more efficient and effective juvenile justice system by incorporating the following principles and strategies into every stage of the delinquency action: (1) promoting collaboration between juvenile court officials, probation agencies, prosecutors, defense attorneys, schools, community organizations, and advocates; (2) using rigorous data collection and analysis to guide decision making. . . (3) utilizing objective criteria, processes, and tools, such as risk-assessment instruments, to replace subjective decision-making processes . . . (4) implementing new or expanded community-based alternatives that can be used in lieu of incarceration.

juvenile courts are “defended by a statement that it is the law’s policy to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.”<sup>71</sup>

Fourth, juvenile courts consider the social and familial background of the minor when imposing a disposition.<sup>72</sup> Juvenile courts are often viewed as acting as a mediator between the state, juvenile, and family to provide resources to rehabilitate the minor.<sup>73</sup> The U.S. Supreme Court has emphasized that the focus of juvenile courts should be tailored to the child’s needs for rehabilitation rather than punishment for the offense committed.<sup>74</sup>

Fifth, juvenile sentences are generally shorter than those for adults who commit the same crimes.<sup>75</sup> The sentencing disparity between juveniles and adults supports the premise that juvenile courts consider the rehabilitative approach rather than a punitive approach by imposing imprisonment as a deterrent mechanism.<sup>76</sup> By imposing a lesser term, if any, a juvenile has a greater chance to rehabilitate rather than being imposed with an excessive sentence, leaving the juvenile hopeless.<sup>77</sup> Imposing a longer sentence is more likely to result in recidivism.<sup>78</sup> To that end, even if a juvenile were to be imprisoned, “[n]o child who is a status offender may be lodged

---

<sup>71</sup> *Gault*, 387 U.S. at 24. The Court stated,

[t]his claim of secrecy, however, is more rhetoric than reality. Disclosure of court records is discretionary with the judge in most jurisdictions. Statutory restrictions almost invariably apply only to the court records, and even as to those the evidence is that many courts routinely furnish information to the FBI and the military, and on request to government agencies and even to private employers.

<sup>72</sup> *Id.*

<sup>73</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 24.

<sup>74</sup> *Miller*, 567 U.S. at 473.

<sup>75</sup> *See, e.g., Roper*, 543 U.S. at 578 (holding that juveniles cannot be sentenced to death); *Graham v. Florida*, 560 U.S. 48, 82 (2010), *modified* (July 6, 2010), (holding that a juvenile cannot be sentenced to mandatory minimum sentence to life in prison for non-homicide crimes); *Miller*, 567 U.S. at 473 (holding that it is unconstitutional to sentence a juvenile to life in prison for any offense without a meaningful opportunity for release).

<sup>76</sup> *Juvenile Justice*, PBS.ORG (Nov. 18, 2015),

<https://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/kidslikeadults.html>.

<sup>77</sup> *See Gault*, 387 U.S. at 26 (“Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.”).

<sup>78</sup> *Id.*

constitutionally in an adult jail,”<sup>79</sup> demonstrating the need to differentiate between juvenile and adult offenders.

Sixth, states use distinct terminology throughout juvenile delinquency proceedings to distinguish juvenile proceedings from adult proceedings. For example, “juveniles are ‘taken into custody,’ not arrested; transported to a detention center, not booked into a jail; a petition for delinquency is filed with the court, not a criminal indictment; the result is an adjudication of delinquency rather than conviction of a felony or misdemeanor crime.”<sup>80</sup> The difference in terminology was in part because the state wanted the children to feel like they were “object of (the state’s) care and solicitude, not that he was under arrest or on trial.”<sup>81</sup>

Lastly and most concerning, juveniles are not entitled to all constitutional rights that are afforded in adult court. While *Gault* provided many fundamental due process rights for juveniles, it did not provide equal rights to which criminal defendants are entitled.<sup>82</sup> The underlying theory that constitutional rights are not applicable in delinquency hearings stems from the notion that juvenile hearings are not criminal but civil; thus, constitutional rights acting as safeguards have no applicability in the civil context.<sup>83</sup> As juvenile courts were created to reform juveniles through rehabilitation, courts determined that minors should not be afforded the same constitutional rights that adult criminal defendants receive.<sup>84</sup> Since juvenile proceedings focus on the child’s best interest with the aim of rehabilitation, the hearings do not replicate that of a criminal adult defendant.<sup>85</sup> Society believed that its “role was not to ascertain whether the child

---

<sup>79</sup> D. B. v. Tewksbury, 545 F. Supp. 896, 906 (D. Or. 1982).

<sup>80</sup> *Youth and the Juvenile Justice System: 2022 National Report*, *supra* note 41, at 93.

<sup>81</sup> *Gault*, 387 U.S. at 15 (citing Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1909)).

<sup>82</sup> *Id.* at 19 (establishing the following constitutional rights for juveniles: right to notice of charges, right to counsel, right against self-incrimination, and rights of confrontation and cross-examination of witnesses).

<sup>83</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 24.

<sup>84</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 24.

<sup>85</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 15.

was ‘guilty’ or ‘innocent,’ but ‘[w]hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.’”<sup>86</sup> In New Jersey, the Code indicates the limited nature of constitutional rights afforded to juveniles in delinquency hearings, which are not equivalent to adults.<sup>87</sup>

## **2. Juvenile Court’s Purpose Overrides the Need for Constitutional Safeguards—Constitutional Decisions Impacting Juvenile Rights from 1966 to 2023.**

The applicability of constitutional rights to juveniles changed significantly over the past century. Notably, at a point in time, juveniles had no constitutional rights involving “delinquent” conduct, such as formal notice of charges to the juvenile, the right to legal counsel, and the right to a trial by jury.<sup>88</sup> The U.S. Supreme Court acknowledged that “[i]n practically all jurisdictions, there [were] rights granted to adults which [were] withheld from juveniles.”<sup>89</sup> As a result, the “[f]ailure to observe the fundamental requirements of due process ha[d] resulted in instances, which might have been avoided, of unfairness to individual and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy.”<sup>90</sup>

In 1966, the U.S. Supreme Court began to shape the juvenile justice system by first holding that courts must provide the “essentials of due process” in waiving juveniles to adult court.<sup>91</sup> The “essentials of due process” included counsel’s ability to review all records involved in the waiver to adult court,<sup>92</sup> and that courts must provide reasons for waiver.<sup>93</sup> Then, in 1967,

---

<sup>86</sup> *History and Development of the Juvenile Court and Judicial Process*, *supra* note 38, at 15 (citation omitted).

<sup>87</sup> § 2A:4A-40 (“All rights guaranteed to criminal defendants by the Constitution of the United States and the Constitution of this State, except the right to indictment, the right to trial by jury and the right to bail, shall be applicable to cases arising under this act.”).

<sup>88</sup> *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971); *Gault*, 387 U.S. at 19.

<sup>89</sup> *Gault*, 387 U.S. at 14.

<sup>90</sup> *Id.* at 19 (“[F]airness, impartiality and orderliness, in short, the essentials of due process—may be a more impressive and more therapeutic attitude so far as the juvenile is concerned.”).

<sup>91</sup> *Kent v. United States*, 383 U.S. 541, 562 (1966).

<sup>92</sup> *Id.* at 563.

<sup>93</sup> *Id.* at 555.

four constitutional rights were established for juveniles if the hearing could result in a commitment to an institution.<sup>94</sup> As a result, juveniles have the right to notice and counsel, cross-examine witnesses, and the protection against self-incrimination.<sup>95</sup> Three years later, in 1970, the Supreme Court held that states must prove juvenile delinquency cases beyond a reasonable doubt.<sup>96</sup>

One year later, jury trials were determined not to be constitutionally required in juvenile delinquency proceedings.<sup>97</sup> It is now well-established that juveniles do not have a constitutional right to a jury trial but are entitled to due process, requiring “fundamental fairness.”<sup>98</sup> But, if an adult committed the same offense as the juvenile, the adult would have a constitutional right to a jury trial.<sup>99</sup> If the juvenile is “waived” to adult court, the juvenile will receive all constitutional rights afforded to an adult.<sup>100</sup> That is, the case will “proceed in the same manner as if the case had been instituted in [adult] court in the first instance.”<sup>101</sup>

The U.S. Supreme Court in 1975 held that it was unconstitutional and constituted double jeopardy to waive a juvenile to adult court after adjudication in juvenile court.<sup>102</sup> The Court next found that the press may publish juvenile court proceedings under limited circumstances.<sup>103</sup>

---

<sup>94</sup> *Gault*, 387 U.S. at 15.

<sup>95</sup> *Id.*

<sup>96</sup> *In re Winship*, 397 U.S. 358, 368 (1970) (“In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*—notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination.”).

<sup>97</sup> *McKeiver*, 403 U.S. at 543.

<sup>98</sup> *Id.* (explaining that “factfinding procedures” are necessary for “fundamental fairness” during juvenile proceedings, which derivatively include the requirements of notice, counsel, confrontation, cross-examination, and standard of proof).

<sup>99</sup> N.J. STAT. ANN. § 2A:4A-26.1(f)(1).

<sup>100</sup> § 2A:4A-28.

<sup>101</sup> *Id.*

<sup>102</sup> *Breed v. Jones*, 421 U.S. 519, 541 (1975).

<sup>103</sup> *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 105 (1979) (holding that state law cannot prevent the press from publishing a name that it obtained independent of the court); *Oklahoma Pub. Co. v. Dist. Ct. In and For Oklahoma County*, 430 U.S. 308, 311-12 (1977) (holding that a court cannot prohibit the press from publishing the name and



After that, the Court was tasked with considering whether a juvenile’s age should be considered in determining whether the death penalty should apply.<sup>104</sup> The Court answered in the affirmative, concluding that an offender’s young age should be considered a mitigating factor in determining whether the death penalty should apply.<sup>105</sup> Relatedly, in 1982, pretrial preventative detention of juveniles was determined to be compatible with the “fundamental fairness” required by due process.<sup>106</sup> Yet again, in 1988 and 1990, the applicability of the death penalty to juveniles became an issue before the Court. In 1988, the Supreme Court concluded that it violated the Eighth Amendment to impose the death penalty on any person who committed a crime under the age of sixteen at the time of the crime.<sup>107</sup> In 1989, the Court further clarified its holding in *Thompson*, indicating that the Eighth Amendment does not preclude the application of the death penalty for crimes committed at the age of sixteen or seventeen.<sup>108</sup>

The Supreme Court revisited the death penalty in 2015, which further expanded juvenile constitutional protections. In *Roper v. Simmons*, the Court held that the execution of juvenile offenders violated the Eighth Amendment.<sup>109</sup> In reaching its decision, the Court relied explicitly on the distinguishment of juveniles from adults: (1) juveniles under eighteen have “a lack of

---

photograph of a juvenile involved in criminal proceedings if it is obtained legally from a source outside of the court).

<sup>104</sup> *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982).

<sup>105</sup> The Supreme Court went on to explain that,

[t]he trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly “during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment” expected of adults.

*Id.* (footnotes and citations omitted).

<sup>106</sup> *Schall*, 467 U.S. at 281 (concluding that the juvenile preventative detention statutes do not violate the Due Process Clause of the Fourteenth Amendment).

<sup>107</sup> *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988).

<sup>108</sup> *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989), *abrogated by Roper*, 543 U.S. at 551.

<sup>109</sup> *Roper*, 543 U.S. at 578 (“The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.”).

maturity and an underdeveloped sense of responsibility;” (2) “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and (3) “it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”<sup>110</sup>

Several U.S. Supreme Court decisions later, like *Roper*, the Court, relied on scientific data to determine that juveniles are different from adult offenders. In 2012, the Court in *Miller v. Alabama* held that mandatory life sentences for juvenile homicide offenders violated the Eight Amendment’s protection against cruel and unusual punishment.<sup>111</sup> Years later, in 2016, the Supreme Court held that children should be treated differently from adults for sentencing.<sup>112</sup> Most recently, in 2021, the Supreme Court held that states have the discretion to determine whether courts are required to make a separate factual finding that a murderer under the age of eighteen was permanently incorrigible before imposing life without parole as a sentence.<sup>113</sup>

---

<sup>110</sup> *Id.* at 569-70.

<sup>111</sup> *Miller*, 567 U.S. at 473.

<sup>112</sup> The Supreme Court articulated that,

in light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like *Montgomery* must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.

*Montgomery v. Louisiana*, 577 U.S. 190, 213 (2016), *as revised* (Jan. 27, 2016).

<sup>113</sup> *Jones v. Mississippi*, 141 S.Ct. 1307, 1322 (2021). The Court further explained,

[s]tates may categorically prohibit life without parole for all offenders under 18. Or States may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole. Or States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth. States may also establish rigorous proportionality or other substantive appellate review of life-without-parole sentences. All of those options, and others, remain available to the States.

From 1966 to 2023, the Supreme Court has shaped the juvenile justice system in a multitude of ways, ranging from providing juveniles with the essentials of due process<sup>114</sup> to its latest decision in 2021 holding that states have discretion in determining whether court must make a separate finding of whether the juvenile was permanently incorrigible before sentencing one to life without parole.<sup>115</sup> Considering all the juvenile constitutional decisions in the fifty-seven-year span, there is a theme in how the Court analyzed the issues and reached its conclusion. That is, juveniles differ from adults and, thus, should not be subject to the same treatment and consequences as adults.

## **B. A Review of New Jersey’s Expungement and Sealing Statute.**

New Jersey provides two avenues for juveniles to remove their record from public access: its expungement and sealing statute. To understand the applicability of New Jersey’s expungement statute to juveniles, I will first describe the law in its current form. Then, I will provide further detail on the historical amendments to the statute, which ultimately led to providing relief for juvenile adjudications. Lastly, in conjunction with New Jersey’s expungement statute’s history, I will explain its alternative remedy of sealing and why it is a less effective means of collateral relief.

### **1. A Review of the Expungement Statute in 2023.**

Beginning with New Jersey’s current expungement statute, it is critical to consider the totality of the statute to recognize the injustices ex-juvenile offenders face with its expungement law. Adult “convictions” and juvenile “delinquency” records are distinguished in the expungement statute, resulting in two different sections.<sup>116</sup> The statute allows one to “present an

---

<sup>114</sup> *Kent*, 383 U.S. at 562.

<sup>115</sup> *Id.*

<sup>116</sup> Section 2 applies to Indictable Offenses, whereas Section 4.1 of the expungement statute applies to Juvenile Delinquents.

expungement application to the Superior Court. . . if[] the person has been convicted of one crime under the laws of [New Jersey], and does not otherwise have any subsequent conviction for another crime, whether within [New Jersey] or any other jurisdiction.”<sup>117</sup> The expunction of records includes “complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, ‘rap sheets’ and judicial docket records.”<sup>118</sup>

The petitioner has the initial burden to demonstrate by a preponderance of the evidence that the requirements of the expungement statute are satisfied.<sup>119</sup> To do so, petitioners must submit “a verified petition and certain accompanying statements.”<sup>120</sup> If the burden is satisfied, the burden then “shifts to the [s]tate to ‘demonstrat[e] by a preponderance of the evidence that there is a statutory bar or that the petition should not be granted.’”<sup>121</sup>

Generally, a person may expunge specific statutory eligible offenses after a specified waiting period, contingent upon the nature and magnitude of the offense.<sup>122</sup> The waiting period is generally calculated “from the date of [their] most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later.”<sup>123</sup> New Jersey categorizes the following offenses for purposes of expunction: (1) indictable offenses, (2) disorderly person or petty offenses, (3) ordinance violations, (4) juvenile delinquency adjudications, and (5) young drug offenders.<sup>124</sup> Each

---

<sup>117</sup> N.J. STAT. ANN. § 2C:52-2(a).

<sup>118</sup> § 2C:51-1(b).

<sup>119</sup> § 2C:52-7(a)-(f) (explaining that the petition must include the petitioner’s date of birth, date of arrest, statute and offenses, case number, date of conviction, and date of disposition); *In re Pet. for Expungement of Crim. Rec. Belonging to T.O.*, 242 A.3d 842, 848 (N.J. 2021).

<sup>120</sup> *T.O.*, 242 A.3d at 848 (citing §§ 2C:52-7, -8).

<sup>121</sup> *Id.*

<sup>122</sup> §§ 2C:52-2 to -4.1.

<sup>123</sup> *Id.*

<sup>124</sup> §§ 2C:52-2 to -5.

category provides for different waiting periods and is subject to varying limitations on expungement.<sup>125</sup>

Turning to the first category of offenses, a person can expunge one “indictable” offense and no more than three disorderly persons or petty disorderly offenses after five years, subject to any limitations imposed under the subsections.<sup>126</sup> The second category entails disorderly persons and petty disorderly persons offenses.<sup>127</sup> A person who has been convicted of one of more disorderly persons or petty disorderly person offense and has not been convicted of any crime may expunge after five years:

no more than five disorderly persons offenses, no more than five petty disorderly persons offenses, or a combination of no more than five disorderly persons and petty disorderly persons offenses, and the person does not otherwise have any subsequent conviction for a disorderly persons or petty disorderly persons offense, whether within [New Jersey] or any other jurisdiction, such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed five.<sup>128</sup>

Third, ordinance violations are not restricted in the number of violations that may be expunged provided the person has no prior or subsequent convictions or is adjudicated as a disorderly person or a petty disorderly person on more than two occasions.<sup>129</sup> The waiting period for an ordinance violation is two years.<sup>130</sup>

---

<sup>125</sup> *Id.*

<sup>126</sup> § 2C:52-2(a).

<sup>127</sup> § 2C:52-3.

<sup>128</sup> § 2C:52-3(b) (explaining that expungement may be granted “although less than five years have expired in accordance with the time requirements when the court finds” that: (1) the five year period is satisfied but less than five years have expired from the date of satisfaction of court-order special assessment; and (2) at least three years have passed since the most recent conviction, payment of court-ordered-financial assessment, completion of supervisory term, or incarceration release date, which is later provided that the person is not convicted of any subsequent crime).

<sup>129</sup> § 2C:52-4.

<sup>130</sup> *Id.*

Fourth, a section of the expungement statute is devoted solely to juveniles adjudicated “delinquent.”<sup>131</sup> Juveniles adjudicated “delinquent” may have delinquency adjudications expunged:

- (1) Pursuant to N.J.S.2C:52-2 [Indictable Offenses], if the act committed by the juvenile would have constituted a crime if committed by an adult;
- (2) Pursuant to N.J.S.2C:52-3 [Disorder Persons or Petty Disorderly Persons Offenses], if the act committed by the juvenile would have constituted a disorderly or petty disorderly persons offense if committed by an adult; or
- (3) Pursuant to N.J.S.2C:52-4 [Ordinances], if the act committed by the juvenile would have constituted an ordinance violation if committed by an adult.<sup>132</sup>

Any “act” committed as a minor resulting in a delinquent adjudication “shall be classified as if that act had been committed by an adult” for expungement.<sup>133</sup> Delinquency records, therefore, must comply with the statutory expungement bar.<sup>134</sup> Some of those offenses subject to the expungement bar, among others, include criminal homicide, kidnapping, sexual assault, false imprisonment, robbery, arson, perjury, and terrorism.<sup>135</sup> Juveniles are, therefore, subject to the same restrictions concerning the class of crimes available for expungement as adults when seeking expungement.<sup>136</sup>

The waiting periods, however, for juvenile delinquents differ from adult offenders.<sup>137</sup> A minor adjudicated “delinquent” could have their entire juvenile delinquency record expunged subject to the statutory bar if:

- (1) Three years have elapsed since the final discharge of the person from legal custody or supervision or three years have elapsed after the entry of any other court order not involving custody or supervision, except that periods of post-

---

<sup>131</sup> § 2C:52-4.1.

<sup>132</sup> § 2C:52-4.1(a)(1)-(3).

<sup>133</sup> § 2C:52-4.1(a).

<sup>134</sup> § 2C:52-2(b).

<sup>135</sup> *Id.*

<sup>136</sup> § 2C:52-2(a)(1)-(3).

<sup>137</sup> § 2C:52-4.1.

incarceration supervision pursuant to section 25 of P.L.1982, c. 77 (C.2A:4A-44), shall not be considered in calculating the three-year period for purposes of this paragraph;

- (2) He has not been convicted of a crime, or a disorderly or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the three years prior to the filing of the petition, and no proceeding or complaint is pending seeking such a conviction or adjudication, except that periods of post-incarceration supervision pursuant to section 25 of P.L.1982, c. 77 (C.2A:4A-44), shall not be considered in calculating the three-year period for purposes of this paragraph;
- (3) He was never adjudged a juvenile delinquent on the basis of an act which if committed by an adult would constitute a crime not subject to expungement under N.J.S.2C:52-2 [Indictable Offenses];
- (4) He has never had an adult conviction expunged; and
- (5) He has never had adult criminal charges dismissed following completion of a supervisory treatment or other diversion program.<sup>138</sup>

The juvenile section does not apply to juveniles who are “waived” up to adult court and have received an “adult conviction.”<sup>139</sup> If the juvenile case is “waived” to adult court, “the case shall proceed as if it originated in [adult] court and shall be subject to the sentencing provisions available to that court.”<sup>140</sup> A juvenile may be “waived” up to adult court and have an adult conviction “if the (1) juvenile was 15 years of age or older at the time of the alleged delinquent act; (2) and there is probable cause to believe that the juvenile committed a delinquent act which if committed by an adult would constitute” one of the enumerated crimes.<sup>141</sup>

---

<sup>138</sup> § 2C:52-4.1(b)(1)-(5).

<sup>139</sup> *Id.*

<sup>140</sup> N.J. STAT. ANN. § 2A:4A-26.1(f)(1).

<sup>141</sup> The statute lists the following delinquent acts which would constitute criminal if committed by an adult:

- (a) criminal homicide, other than death by auto; (b) strict liability for drug-induced deaths; (c) first degree robbery; (d) carjacking; (e) aggravated sexual assault; (f) sexual assault; (g) second degree aggravated assault; (h) kidnapping; (i) aggravated arson; (j) possession of a firearm with a purpose to use it unlawfully against the person of another under subsection a. of N.J.S.2C:39-4, or possession of a firearm while committing or attempting to commit, including the immediate flight therefrom, aggravated assault, aggravated criminal sexual contact, burglary, or escape; (k) Leader of a Narcotics Trafficking Network; (l) Maintaining and Operating a CDS Production Facility; (m)

Lastly, a section is dedicated to records of young drug offenders.<sup>142</sup> Under this provision, an individual, who was twenty-one years of age or younger at the time of the offense, may petition for the expunction of offenses involving possession or use of a controlled dangerous substance after one year.<sup>143</sup>

More recently, in 2019, New Jersey added a section to its expungement statute, creating an “automated” expunction process.<sup>144</sup> The “automated ‘clean slate’ process” is an automated process occurring after ten years where all records are to be rendered:

inaccessible to the public either through expungement, sealing, or equivalent process for any person who has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses under the laws of [New Jersey], unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection (b) or (c) of n b. or c. of N.J.S.2C:52-2 [Indictable Offenses].<sup>145</sup>

Convictions not eligible for expunction will be restored if the person is convicted of a subsequent crime, “or which the conviction is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2 [Indictable Offenses].”<sup>146</sup>

---

Weapons Possession while Committing certain CDS Offenses; (n) an attempt or conspiracy to commit any of the crimes enumerated in subparagraphs (a) through (m) of this paragraph; or (o) a crime committed at a time when the juvenile previously had been sentenced and confined in an adult correctional facility.

§ 2A:4A-26.1(c)(1)-(2).

<sup>142</sup> § 2C:52-5.

<sup>143</sup> Section 5 of New Jersey’s expungement statute:

shall not apply to any person who has been convicted of the sale or distribution of a controlled dangerous substance or possession with the intent to sell any controlled dangerous substance except:

- (1) Marihuana, where the total sold, distributed or possessed with intent to sell was less than one ounce, or
- (2) Hashish, where the total amount sold, distributed or possessed with intent to sell was less than five grams.

*Id.*

<sup>144</sup> § 2C:52-5.4.

<sup>145</sup> § 2C:52-5.4(a)(1).

<sup>146</sup> § 2C:52-5.4(a)(2).



## 2. The History of Amendments in New Jersey’s Expungement Statute and its Related Sealing Precursor.

Since enacting the expungement statute, New Jersey’s legislature has expanded the availability of expunction while making the process generally easier. Each of the amendments sought to accomplish its overriding goal of “serv[ing] ‘to eliminate “the collateral consequences imposed upon otherwise law-abiding citizens who ha[d] had a minor brush with the criminal justice system.””<sup>147</sup> When the statute was first enacted in 1979, an individual could have their record expunged if, after ten years, the individual “had not been convicted of a prior or subsequent crime, or of two or more disorderly or petty disorderly person offenses.”<sup>148</sup> One year later, in response to the ruling in *New Jersey v. W. J. A.*,<sup>149</sup> the legislature amended the statute after recognizing that the statute did not provide relief for juvenile adjudications.<sup>150</sup> In *W. J. A.*, the petitioner sought to expunge adult convictions and juvenile adjudications.<sup>151</sup> The adult convictions but not juvenile adjudications were expunged.<sup>152</sup> In denying the expungement of the juvenile records, the court stated that “[u]ntil such time as the [l]egislature authorize[d] expungement for juvenile delinquency adjudications as opposed to” adult convictions, “the sole remedy to prevent disclosure lie[d] in the sealing statute.”<sup>153</sup>

The expungement statute was amended a year later, and “[t]he overarching goal of the 1980 amendments was to expand the expungement remedy for juvenile adjudications.”<sup>154</sup> The legislature added a section that allowed two routes to expunge juvenile delinquency

---

<sup>147</sup> In re J.S., 121 A.3d 322, 328 (N.J. 2015) (quoting *Kollman*, 46 A.3d at 1247).

<sup>148</sup> *D.J.B.*, 83 A.3d at 8 (citing § 2C:52-2).

<sup>149</sup> 412 A.2d at 1356.

<sup>150</sup> *D.J.B.*, 83 A.3d at 8.

<sup>151</sup> *W. J. A.*, 412 A.2d at 1356.

<sup>152</sup> *Id.* at 1358.

<sup>153</sup> *Id.* at 1355 (citing N.J. STAT. ANN. § 2A:4-67).

<sup>154</sup> *J.B.*, 45 A.3d at 1021.

adjudications.<sup>155</sup> First, a provision was added to allow for the expunction of juvenile delinquency adjudications.<sup>156</sup> The second provision allowed for expunging records of dismissed juvenile charges.<sup>157</sup>

New Jersey's legislature focused mainly on the legislative intent when amending the statute to add a section for the expunction of juvenile adjudications.<sup>158</sup> "The 1980 statute must be interpreted in light of the problem it was designed to solve, which was the prior law's omission of an avenue for expunging juvenile adjudications."<sup>159</sup> The intent behind the amendment could not have been more explicit:

*The purpose of this bill is to allow for the expungement of juvenile delinquency adjudications. It provides that such records may be expunged under the same conditions as if the act which resulted in the adjudication of delinquency had been committed by an adult.*

Additionally, the bill provides that a person may have his entire juvenile record expunged if he has not been convicted of a crime or a disorderly or petty disorderly persons offense or adjudged a delinquent . . . for a period of 5 years and his record contains no offense which could not be expunged if committed by an adult.<sup>160</sup>

The 1980 amendment to New Jersey's expungement statute to permit the expunction of juvenile adjudications is inconsistent with the Code unless it permits the expungement of all juvenile records without a statutory bar. The Code stresses that one is deemed a delinquent should not be "deemed a criminal by reason of such disposition" and that "[n]o disposition [of delinquency] shall operate to impose any of the civil disabilities ordinarily imposed by virtue of a criminal

---

<sup>155</sup> See L. 1980, c. 1963, § 1 (codified at N.J. STAT. ANN. § 2C:52-4.1).

<sup>156</sup> §§ 2C:52-4.1(a), (b).

<sup>157</sup> § 2C:52-4.1(c).

<sup>158</sup> *J.B.*, 45 A.3d at 1021-22.

<sup>159</sup> *Id.* at 1016 (citing Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 22.29 (7th ed. 2009)).

<sup>160</sup> S., No. 1266 (Sponsor's Statement), 199th Leg. (N.J. May 5, 1980) (emphasis added); see also *S. Judiciary Comm. Statement to S., No. 1266*, 199th Leg. (N.J. June 9, 1980); *Assemb. Judiciary, Law, Public Safety & Defense Comm. Statement to S., No. 1266*, 199th Leg. (N.J. Aug. 7, 1980).

conviction.”<sup>161</sup> A statutorily barred offense for an adult is also barred for a juvenile, and thus, causes the juvenile to face civil disabilities because the offense cannot be expunged. Although the amendment covered juveniles, it treated them like adults and afforded no relief due to youth from the statutorily barred offenses.

The precursor remedy to New Jersey’s expungement statute was its sealing statute. Sealing is now considered a second and less effective remedy to restrict public access to juvenile records.<sup>162</sup> Before expungement for delinquency adjudications, sealing was the only method to prevent juvenile record disclosure.<sup>163</sup> The statute permits a juvenile to request to seal all delinquency adjudications and law enforcement records of juvenile adjudications.<sup>164</sup> The sealing of records is limited to juvenile delinquency records.<sup>165</sup> Generally, sealed juvenile records are not disclosed to the public and can result in penalties if disclosed.<sup>166</sup> The sealing statute, however, allows for the disclosure of sealed juvenile records in limited circumstances, such as,

[w]here the offense for which the juvenile has been adjudicated delinquent if committed by an adult, would constitute a crime of the first, second or third degree, or aggravated assault, destruction or damage to property to an extent of more than \$500.00, unless upon application at the time of disposition the juvenile demonstrates a substantial likelihood that specific and extraordinary harm would result from such disclosure in the specific case. Where the court finds that disclosure would be harmful to the juvenile, the reasons therefore shall be stated on the record.<sup>167</sup>

New Jersey imposes two requirements to qualify for the sealing of juvenile records.<sup>168</sup> First, a person must wait two years after the final discharge from the juvenile adjudication.<sup>169</sup>

---

<sup>161</sup> N.J. STAT. ANN § 2A:4A-48.

<sup>162</sup> *W. J. A.*, 412 A.2d at 1357.

<sup>163</sup> *Id.* at 1355.

<sup>164</sup> *Id.*

<sup>165</sup> § 2A:4A-62.

<sup>166</sup> § 2A:4A-60.

<sup>167</sup> § 2A:4A-60(f).

<sup>168</sup> § 2A:4A-62(a)(1)-(2).

<sup>169</sup> § 2A:4A-62(a)(1).

The waiting period is waived if enlisted in the armed forces.<sup>170</sup> Second, the person must have no later convictions during the waiting period and not have any pending criminal proceedings when requesting such records to be sealed.<sup>171</sup> If the person is convicted of any subsequent crime post-sealing, the relief provided by the sealing will automatically “have the effect of nullifying the sealing order.”<sup>172</sup>

Notwithstanding the availability of an alternative to restrict public access to juvenile records, the “remedy of expungement is far more effective than sealing in destroying all traces of contact with the criminal justice system.”<sup>173</sup> The accessibility of juvenile records can be revealed if the individual is convicted of any subsequent crime after the sealing.<sup>174</sup> The inspection of juvenile records is permitted by court order, and later convictions by the petitioner will nullify the sealing order.<sup>175</sup> Since the records of juvenile adjudications will only be “sealed,” the individual is “required to reveal them on . . . disclosure form[s].”<sup>176</sup> Sealing differs from expunction insofar as that expunged records will not be reactivated when subsequently convicted of another crime, whereas sealing does.<sup>177</sup> Also, when prior convictions are expunged in New Jersey, individuals ordinarily do not have to disclose them, with few exceptions.<sup>178</sup> Unsurprisingly, the “diminished protective effect of the sealing statute appears to be in direct

---

<sup>170</sup> § 2A:4A-62(b).

<sup>171</sup> § 2A:4A-62(a)(2).

<sup>172</sup> § 2A:4A-62(e).

<sup>173</sup> *W. J. A.*, 412 A.2d at 1357; *see also 33A New Jersey Practice, Criminal Law* § 44.10 at 489 (Gerald D. Miller) (3d ed. 2001) (“The remedy of sealing of records is less effective than expungement in removing the traces of an individual’s contacts with the criminal justice system.”).

<sup>174</sup> § 2A:4A-62(e).

<sup>175</sup> *W. J. A.*, 412 A.2d at 1358.

<sup>176</sup> *Id.* at 1357.

<sup>177</sup> *Id.*

<sup>178</sup> *T.O.*, 242 A.3d at 848 (“[A] person whose record has been expunged must still reveal information in expunged records if he or she seeks employment with the Judiciary, law enforcement, or a corrections agency.” (citing § 2C:52-27(c))).

contravention of the rehabilitative purposes of [New Jersey’s] juvenile delinquency laws.”<sup>179</sup> “The statutory scheme is designed to permit the exercise of the powers of the State as *parens patriae* for the purpose of rehabilitating youthful offenders and not of punishing them for the commission of a crime.”<sup>180</sup>

The sealing statute, as written, appears to allow for sealing offenses ineligible for expungement, *i.e.*, arson and robbery.<sup>181</sup> No decisions, however, have been rendered in New Jersey addressing this issue of whether sealing applies to felony offenses. Still, the sealing exception allows for the disclosure since a felony offense presumably is one which “if committed by an adult, would constitute a crime of the first, second or third degree, or aggravated assault, destruction or damage to property to an extent of more than \$500.00.”<sup>182</sup>

### **C. An Overview of Other State’s Expungement and Sealing Laws.**

A review of the expungement laws nationally leads to greater hope of removing collateral consequences ex-juvenile offenders face. In some states, unfortunately, expungement or its equivalent remains at a standstill. State expungement statutes vary in scope, with some states offering broad expunction relief, whereas others provide limited or no form of expunction relief.<sup>183</sup> A few states with broader felony and misdemeanor relief are Arizona, Colorado, Massachusetts, Michigan, Nevada, and Washington.<sup>184</sup> Some states with no general sealing or set-aside laws for convictions consist of Alaska, Florida, Hawaii, Maine, and Wisconsin.<sup>185</sup> Also

---

<sup>179</sup> *W. J. A.*, 412 A.2d at 1358.

<sup>180</sup> *Id.* (citing *New Jersey in the Interest of D.B.S.*, 349 A.2d 105 (N.J. Super. Ct. App. Div. 1975), *cert. den.* 358 A.2d 191 (1976)).

<sup>181</sup> *See* N.J. STAT. ANN § 2A:4A-62.

<sup>182</sup> § 2A:4A-60(f).

<sup>183</sup> *50-State Comparison: Expungement, Sealing & Other Record Relief*, *supra* note 5.

<sup>184</sup> *50-State Comparison: Expungement, Sealing & Other Record Relief*, *supra* note 5.

<sup>185</sup> *50-State Comparison: Expungement, Sealing & Other Record Relief*, *supra* note 5.

included in this category is the federal government.<sup>186</sup> For juvenile adjudications, states vary regarding collateral relief availability, with some states offering limited, if any, sealing opportunities while others have sealing and expunction statutes.<sup>187</sup>

### **1. States with Broad Expunction Remedies.**

Several states provide broad relief for expunction or its equivalent. To begin, in Arizona, a person at least eighteen and adjudicated a delinquent may petition to set aside delinquent adjudications upon discharge from probation or absolute discharge unless the individual has subsequent criminal charges pending, remains on probation, has not been released from a juvenile facility upon completion of an individual treatment plan, or a balance remains for restitution or fines.<sup>188</sup> A juvenile cannot “set-aside” the adjudication if the juvenile adjudication involves any offenses involving: (1) infliction of serious injury; (2) the use or exhibition of a deadly weapon or dangerous instrument; (3) sexual offenses; (4) driving under the influence or with a suspended license; or (5) a civil traffic violation.<sup>189</sup> When evaluating the petition to set-aside the adjudication, courts may consider: “(1) [t]he nature and circumstances of the offense on which the adjudication is based; (2) [w]hether the person has been convicted of a felony offense; (3) [w]hether the person has any pending criminal charges; (4) [t]he victim’s input; and (5) [a]ny other factor that is relevant to the application.”<sup>190</sup>

If the court grants the request to set-aside the juvenile record, the effect is “that the person be released from all penalties and disabilities resulting from the adjudication except those imposed by the department of transportation.”<sup>191</sup> In 2021, Arizona allowed for the sealing of

---

<sup>186</sup> *50-State Comparison: Expungement, Sealing & Other Record Relief*, *supra* note 5.

<sup>187</sup> *50-State Comparison: Expungement, Sealing & Other Record Relief*, *supra* note 5.

<sup>188</sup> ARIZ. REV. STAT. §§ 8-348(A), (C) (2021).

<sup>189</sup> § 8-348(D).

<sup>190</sup> § 8-348(C)(1)-(5).

<sup>191</sup> § 8-348(D)(1).

adult convictions for the first time.<sup>192</sup> Generally, most adult convictions are eligible for sealing except for a limited class of felony offenses.<sup>193</sup> A person may deny the conviction upon sealing, “including in response to questions on employment, housing, financial aid or loan applications,” with few exceptions.”<sup>194</sup>

---

<sup>192</sup> See SB1294, enacting ARIZ. REV. STAT. § 13-911 (2023).

<sup>193</sup> § 13-911(O)(1)-(6). Arizona restricts this section from:

[a] person who is: 1. [s]entenced as a dangerous offender pursuant to § 13-704; 2. [c]onvicted of a dangerous crime against children as defined in § 13-705; 3. [c]onvicted of a serious offense or violent or aggravated felony as defined in § 13-706; 4. [c]onvicted of any offense that has either of the following as an element of the offense: (a) [t]he discharge, use or threatening exhibition of a deadly weapon or dangerous instrument. (b) [t]he knowing infliction of serious physical injury on another person; 5. [c]onvicted of sex trafficking pursuant to § 13-1307; [and] 6. [c]onvicted of a class 2, 3, 4 or 5 felony offense that is included in chapter 14 or 35.1 of this title.

<sup>194</sup> § 13-911(5)(a)-(k). The record must be disclosed in the following circumstances:

- (a) The person is submitting an application that requires a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.2
- (b) The sealed case records involved a violation of chapter 34 of this title.
- (c) The sealed case records involved burglary or theft from a residential or nonresidential structure and the person is applying for a job that requires entering into and performing services inside of a residential structure.
- (d) The sealed case records involved child abuse or aggravated assault and the person is applying for a job involving supervising, educating or administering care to a minor.
- (e) The sealed case records involved vulnerable adult abuse and the person is applying for a job involving supervising or administering care to a vulnerable adult or a person who is at least sixty-five years of age.
- (f) The sealed case records involved a violation of § 5-395.01, 5-396, 5-397, 13-1814, 28-1381, 28-1382, 28-1383, 28-8282, 28-8284, 28-8286, 28-8287 or 28-8288 and the person is applying for a job involving the commercial or private operation of a motor vehicle, boat or airplane.
- (g) The sealed case records involved theft, theft of means of transportation, forgery, taking the identity of another or fraudulent schemes and artifices and the person is applying for a job involving accounting, overseeing, transporting, handling or managing another person's money or financial assets.
- (h) The person is applying for a position with a law enforcement agency, a prosecutor's office, a court, a probation department, a child welfare agency as defined in § 8-501, the department of child safety, the department of juvenile corrections or the state department of corrections.
- (i) The person is undergoing a background check for the placement with that person of a child who is in the custody of the department of child safety.
- (j) The disclosure is required by a state or federal law.
- (k) The disclosure is required to comply with program integrity provisions of medicare, medicaid or any other federal health care program.

Next, juvenile expungement is available in Colorado for all but serious violent offenses.<sup>195</sup> Before a revision in 2017, expungement was only available for less-serious offenses.<sup>196</sup> One could petition for expungement, but it was subject to the court’s discretion and required a waiting period contingent upon the committed offense.<sup>197</sup> In 2019, the Colorado legislature amended the expungement statute to require courts to expunge the following records after forty-two days: (1) acquittals and dismissals, (2) deferred adjudication, and (3) upon completion of sentence, adjudications for petty offenses, class 2 and 3 misdemeanors, and level 1 and 2 drug misdemeanors.<sup>198</sup> If a court orders diversion, deferred adjudication, or an alternative disposition for a juvenile, it must make a finding on the record of whether the juvenile is eligible for expungement.<sup>199</sup>

The prosecutor and victims, if any, receive notice from the court explaining that objections to the expungement must be submitted within thirty-five days.<sup>200</sup> If an objection is raised, the court will have a hearing to determine whether “the rehabilitation of the juvenile has been attained to the satisfaction of the court” and that “the expungement is in the best interest of the juvenile and the community.”<sup>201</sup> If no objection is raised, the court must order the expungement.<sup>202</sup> The effect of the Colorado juvenile expungement is that “records are deemed

---

<sup>195</sup> COLO. REV. STAT. ANN. § 19-1-306 (2022).

<sup>196</sup> *Arizona Restoration of Rights & Record of Relief*, COLLATERAL CONSEQUENCES RES. CTR. RESTORATION OF RTS. PROJECT, [https://ccresourcecenter.org/state-restoration-profiles/arizona-restoration-of-rights-pardon-expungement-sealing/#III\\_Expungement\\_sealing\\_other\\_record\\_relief](https://ccresourcecenter.org/state-restoration-profiles/arizona-restoration-of-rights-pardon-expungement-sealing/#III_Expungement_sealing_other_record_relief) (last updated Oct. 28, 2022).

<sup>197</sup> *Id.*

<sup>198</sup> § 19-1-306(4)(a).

<sup>199</sup> § 19-1-306(5)(a).

<sup>200</sup> § 19-1-306(5)(c)(I).

<sup>201</sup> § 19-1-306(5)(e)-(g).

<sup>202</sup> § 19-1-306(5)(d).



never to have existed.”<sup>203</sup> The juvenile may deny the circumstances of the offense and adjudication.<sup>204</sup>

Still, Colorado limits juvenile expunction by providing a statutory bar when the juvenile is:

- (a) Adjudicated as an aggravated juvenile offender . . . or as a violent juvenile offender pursuant to section 19-2.5-1125(3);
- (b) Adjudicated of homicide and related offenses pursuant to part 1 of article 3 of title 18;
- (c) Adjudicated for a felony offense involving unlawful sexual behavior as described in section 16-22-102(9); or
- (d) Charged, adjudicated, or convicted of any offense or infraction pursuant to title 42.<sup>205</sup>

For demonstrative purposes, an “aggravated juvenile offender,” as outlined in section 19-2.5-1125(4)(a)(I), is one adjudicated for a delinquent act that constitutes a class of one or two felonies.<sup>206</sup> A “violent juvenile offender,” for purposes of subsection (a), is when a “juvenile is adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence as defined in section 18-1.3-406(2).”<sup>207</sup> A “crime of violence” includes, but is not limited to, the following crimes:

- (A) any crime against an at-risk adult or at-risk juvenile; (B) murder; (C) first or second-degree assault; (D) kidnapping; (E) a sexual offense under part 4 of article 3 of this title; (F) aggravated robbery; (G) first-degree arson; (H) first-degree burglary; (I) escape; (J) criminal extortion; (K) first or the second-degree unlawful termination of pregnancy; or (L) any unlawful sexual offenses in which cause bodily injury or in which the individual used threat, intimidation, or force.<sup>208</sup>

---

<sup>203</sup> COLO. REV. STAT. ANN. § 19-1-103(63) (2022).

<sup>204</sup> COLO. REV. STAT. ANN. § 13-10-115.5(1)(a) (2021); § 19-1-306(1)(a).

<sup>205</sup> § 19-1-306(a).

<sup>206</sup> § 19-2.5-1125(4) (2021).

<sup>207</sup> § 19-2.5-1125.

<sup>208</sup> COLO. REV. STAT. ANN. § 18-1.3-406(2) (2018).

Robbery is a class four misdemeanor in Colorado and is committed when “[a] person who knowingly takes anything of value from the person or presence of another by the use of force, threats, or intimidation commits robbery.”<sup>209</sup> On the other hand, “aggravated robbery” is a class three felony and is when a deadly weapon is used or threatened to be used during the commission of the robbery.<sup>210</sup> “Aggravated robbery” thus cannot be expunged in Colorado, but “robbery” as a class four misdemeanor is eligible.<sup>211</sup>

Colorado’s expungement statute also has a “clean slate” automatic provision.<sup>212</sup> All offenses eligible for petition-based sealing, except violent crimes, will be automatically sealed upon reaching the requisite waiting period.<sup>213</sup> The statute provides for the following waiting periods: (1) four years for civil infractions, (2) seven years for petty offenses or misdemeanors, and (3) ten years for convictions involving eligible felonies.<sup>214</sup> The district attorney may object to sealing a non-drug related eligible felony within forty-five days if the “district attorney has a reasonable belief, grounded in supporting facts, that the public interest and public safety in retaining public access to the current record or case outweighs the privacy interest of, or adverse consequences to, the defendant.”<sup>215</sup> In evaluating a sealing request, courts must at least consider the severity of the offense, the criminal history of the petitioner, the number of convictions and the dates of those convictions seeking to be sealed, and the government agency’s need for the records.<sup>216</sup>

---

<sup>209</sup> COLO. REV. STAT. ANN. § 18-4-301 (1977).

<sup>210</sup> § 18-4-302.

<sup>211</sup> See COLO. REV. STAT. ANN. § 19-1-306(4)(a)(3).

<sup>212</sup> COLO. REV. STAT. ANN. § 13-3-117 (2022).

<sup>213</sup> *Id.*

<sup>214</sup> 13-3-117(1)(a)(II)(A)-(B).

<sup>215</sup> 13-3-117(3)(a)(I)-(V).

<sup>216</sup> COLO. REV. STAT. ANN. § 24-72-706(1)(g).

## 2. States with Narrow or No Remedial Remedies.

The District of Columbia does not allow for expungement.<sup>217</sup> Instead, the District of Columbia only provides for sealing juvenile adjudication records in limited circumstances.<sup>218</sup> A juvenile may move to vacate its order and findings and seal all court records.<sup>219</sup> The court will grant the motion if it:

finds that (1)(A) a neglected child has reached his majority, or two years have elapsed since the final discharge of the person from legal custody or supervision, or (B) since the entry of any other [d]ivision order not involving custody or supervision and (2) he has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication.<sup>220</sup>

The effect of this procedure is that “the case shall be treated as if [it] never occurred.”<sup>221</sup> That is, any court or agency “shall reply, and the person who is the subject matter of the records may reply, to any inquiry that no record exists.”<sup>222</sup> Further, ex-juvenile offenders are not “required to disclose and shall have the right to refuse disclosure of his or her juvenile delinquency history in an application for employment, education, or housing.”<sup>223</sup> But, any subsequent convictions have a nullifying effect on the sealing order.<sup>224</sup>

Relatedly, for adults, courts in the District of Columbia will only grant the sealing of a criminal record “if it is in the interests of justice to do so.”<sup>225</sup> For eligible convictions, the movant must demonstrate “by clear and convincing evidence that it is in the interests of justice to

---

<sup>217</sup> *District of Columbia Restoration of Rights & Record of Relief*, COLLATERAL CONSEQUENCES RES. CTR. RESTORATION OF RTS. PROJECT, <https://ccresourcecenter.org/state-restoration-profiles/district-of-columbia-restoration-of-rights-pardon-expungement-sealing/> (last updated May 6, 2023).

<sup>218</sup> D.C. CODE ANN. § 16-803 (2022).

<sup>219</sup> D.C. CODE ANN. § 16-2335(a) (2018).

<sup>220</sup> *Id.*

<sup>221</sup> § 16-2335(c).

<sup>222</sup> *Id.*

<sup>223</sup> § 16-2335(h).

<sup>224</sup> § 16-2335(e).

<sup>225</sup> § 16-803(h)(1).

grant relief.”<sup>226</sup> The court weighs many factors in determining whether it is in the interest of justice, with some being required.<sup>227</sup> The following factors are required to be considered by courts: (1) “the interests of the movant in sealing the publicly available records,” (2) “the community’s interest in retaining access to those records,” and (3) “the community’s interest in furthering the movant’s rehabilitation and enhancing the movant’s employability.”<sup>228</sup> Some discretionary factors the court may consider are (1) “[t]he nature and circumstances of the offense at issue; (2) “[t]he movant’s role in the offense or alleged offense;” (3) “history and characteristics of the movant;” (4) [t]he number of arrests or convictions that are the subject of the motion;” and (5) “the time that has elapsed since the arrest or convictions that are the subject of the motion.”<sup>229</sup>

Other states, such as Alaska, provide minimal circumstances for persons to restrict their criminal record from public access. Juvenile delinquency records are typically confidential and unavailable to the public.<sup>230</sup> Courts, therefore, must seal most juvenile delinquency records “within 30 days of the date of a minor’s 18th birthday or, if the court retains jurisdiction of a minor past the minor’s 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor.”<sup>231</sup> The exception to this sealing requirement consists of (1) traffic offenses, (2) class A & B felonies against the person, (3) first-degree arson, and (4) misconduct involving weapons in the first degree.<sup>232</sup>

Nevertheless, suppose the juvenile was charged as an adult in Alaska. There, most records may be sealed “five years after the completion of the sentence imposed for the offense

---

<sup>226</sup> § 16-803(i)(3).

<sup>227</sup> *Id.*

<sup>228</sup> § 16-803(h)(1)(A)-(C).

<sup>229</sup> § 16-803(h)(2)(A)-(E).

<sup>230</sup> ALASKA STAT. ANN. § 47.12.300 (2021).

<sup>231</sup> *Id.*

<sup>232</sup> § 47.12.030(a)(1)-(4).

for which the person was tried as an adult or five years after a disposition was entered for an offense for which the records were made public under (g) of this section.”<sup>233</sup> But the court will only grant the petition to seal the offenses if it “finds that its order has had its intended rehabilitative effect and further finds that the person has fulfilled all orders of the court.”<sup>234</sup> If the juvenile’s record is sealed, “[a] person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.”<sup>235</sup>

For adults, the expungement statute in Alaska does not provide a mechanism for the sealing or expunging of valid adult convictions. Instead, there is “a clear preference for public records to remain accessible.”<sup>236</sup> “[J]udicial expungement of criminal records should be an exceptional or extraordinary remedy rather than a generally available one.”<sup>237</sup> Therefore, the only way an adult in Alaska can regain lost rights and civil disabilities from the conviction is through a pardon.

The only adult criminal records that could be sealed are cases involving a conviction that “resulted from mistaken identity or false accusation.”<sup>238</sup> Still, the movant must prove beyond a reasonable doubt to the head of the agency that the conviction “resulted from mistaken identity or false accusation.”<sup>239</sup> The effect of this sealing is that the person “may deny the existence of the information and of an arrest, charge, conviction, or sentence shown in the information.”<sup>240</sup>

---

<sup>233</sup> § 47.12.300(f); *see* § 47.12.030(a)(1)-(4) (explaining that this subsection does not apply to minors who were accused of (1) traffic offenses, (2) class A & B felonies against the person, (3) first degree arson, and (4) misconduct involving weapons in the first degree).

<sup>234</sup> § 47.12.300(f).

<sup>235</sup> *Id.*

<sup>236</sup> *Johnson v. Alaska*, 50 P.3d 404, 406 (Alaska Ct. App. 2002).

<sup>237</sup> *Farmer v. Alaska*, 235 P.3d 1012, 1015 (Alaska 2010).

<sup>238</sup> § 12.62.180(b) (1994).

<sup>239</sup> *Id.*

<sup>240</sup> § 12.62.180(d).

The record, however, may still be used: “(1) for record management purposes, including auditing; (2) for criminal justice employment purposes; (3) for review by the subject of the record; (4) for research and statistical purposes; (5) when necessary to prevent imminent harm to a person; or (6) for a use authorized by statute or court order.”<sup>241</sup>

### **3. New Jersey’s Expungement and Sealing Statute Differs from Other State’s Remedial Remedies.**

States vary in the degree of collateral relief available for adult convictions and juvenile adjudications. New Jersey is generally classified as having limited felony and misdemeanor relief compared to other states.<sup>242</sup> Beginning with the states with broad expunction remedies, New Jersey is more restrictive than states such as Arizona and Colorado.

For example, in Arizona, all but class one felonies and specific sexual offenses can be sealed.<sup>243</sup> The number of convictions or adjudications is not restricted.<sup>244</sup> On the other hand, New Jersey limits the number of crimes eligible for expunction based on the offense category.<sup>245</sup> The number of adjudications a juvenile is eligible to “set aside” is minimal compared to the crimes ineligible for expunction in New Jersey. Specifically, juveniles cannot set aside the following crimes in Arizona involving: (1) infliction of serious injury; (2) the use or exhibition of a deadly weapon or dangerous instrument; (3) sexual offenses; (4) driving under the influence or with a suspended license; or (5) a civil traffic violation.<sup>246</sup> The adult sealing available allows adults to seal most adult convictions besides a limited class of felonies.<sup>247</sup> In contrast, New

---

<sup>241</sup> § 12.62.180(d)(1)-(6).

<sup>242</sup> *50-state Comparison: Expungement, Sealing & Other Record Relief*, *supra* note 5.

<sup>243</sup> *See* ARIZ. REV. STAT. ANN. § 13-911(O).

<sup>244</sup> *See id.*

<sup>245</sup> *See generally* N.J. STAT. ANN. §§ 2C:52-2 to -4.1.

<sup>246</sup> ARIZ. REV. STAT. ANN. § 8-348(C)(1)-(5).

<sup>247</sup> ARIZ. REV. STAT. ANN. § 13-911(O)(1)-(6). Arizona restricts this section from:

Jersey generally only allows for juvenile sealing of adjudications, except if the adult offense involves marijuana.<sup>248</sup>

Colorado's expungement law is also more expansive than New Jersey's. In Colorado, courts are required to expunge the following records after forty-two days: (1) acquittals and dismissals, (2) deferred adjudications, and (3) upon completion of sentence, adjudications for petty offenses, class 2 and 3 misdemeanors, and level 1 and 2 drug misdemeanors.<sup>249</sup> Unlike New Jersey, when the court orders diversion, deferred adjudication, or an alternative disposition for a juvenile, it must then make a finding on the record of whether the juvenile is eligible for expungement.<sup>250</sup>

Turning to the restrictive expunction states, New Jersey's expunction relief is more expansive than states such as the District of Columbia and Alaska. In the District of Columbia, the only relief offered for ex-juvenile offenders is sealing juvenile adjudications.<sup>251</sup> In contrast, New Jersey allows for expungement or sealing for juvenile adjudications. Like New Jersey, a subsequent conviction will nullify the sealing order in the District of Columbia.<sup>252</sup> But, unlike New Jersey, in the District of Columbia, the sealing of records is treated as if "as if they never

---

a person who is: 1. Sentenced as a dangerous offender pursuant to § 13-704; 2. Convicted of a dangerous crime against children as defined in § 13-705; 3. Convicted of a serious offense or violent or aggravated felony as defined in § 13-706; 4. Convicted of any offense that has either of the following as an element of the offense: (a) The discharge, use or threatening exhibition of a deadly weapon or dangerous instrument. (b) The knowing infliction of serious physical injury on another person; 5. Convicted of sex trafficking pursuant to § 13-1307; [and] 6. Convicted of a class 2, 3, 4 or 5 felony offense that is included in chapter 14 or 35.1 of this title.

<sup>248</sup> N.J. STAT. ANN. § 2C:52-5.2.

<sup>249</sup> COLO. REV. STAT. ANN § 19-1-306(4)(a).

<sup>250</sup> § 19-1-306(5)(a).

<sup>251</sup> *District of Columbia Restoration of Rights & Record Relief*, COLLATERAL CONSEQUENCES RESOURCE CENTER, [https://ccresourcecenter.org/state-restoration-profiles/district-of-columbia-restoration-of-rights-pardon-expungement-sealing/#III\\_Expungement\\_sealing\\_and\\_other\\_record\\_relief](https://ccresourcecenter.org/state-restoration-profiles/district-of-columbia-restoration-of-rights-pardon-expungement-sealing/#III_Expungement_sealing_and_other_record_relief) (last visited Mar. 30, 2023).

<sup>252</sup> D.C. CODE ANN. § 16-2335(e) (2018).

occurred,” including using records for law enforcement purposes.<sup>253</sup> In practice, the District of Columbia’s sealing statute operates in the equivalent of New Jersey’s expungement statute.

New Jersey’s expungement law is likewise more expansive than Alaska’s. Alaska has made it clear that there is a preference for disclosing and making the records publicly accessible.<sup>254</sup> Juvenile delinquency records remain predominately confidential and unavailable to the public. Courts in Alaska, however, only provide a “sealing” remedy, unlike New Jersey, providing an opportunity to seal or expunge juvenile adjudications.

## **II. Analyzing the Issues Presented from a Logical and Doctrinal Perspective.**

Juveniles are a population that should have full expungement rights. After considering the purpose of juvenile courts in conjunction with the purpose of collateral relief, it will inevitably lead to the correct conclusion that permitting juvenile expunction is consistent with both objectives. It is no secret that juveniles do not have the same mental capacity and intention to commit crimes as adults. Without full juvenile expunction relief, minority communities are highly likely to suffer the life-long consequences of a juvenile record. That said, Section A will address the long-standing scientific history of juveniles’ undeveloped mental capacity and reduced culpability. Section B will then address the doctrinal aspect of the proposed amendment in further detail.

### **A. From a Logical Standpoint: Children Neither Have the Same Mental Capacity nor Culpability as Adults.**

The purpose of the juvenile system must be viewed through the lens of rehabilitation. Children are different from adults in all aspects.<sup>255</sup> Children are less culpable and have a

---

<sup>253</sup> § 16-2335(c).

<sup>254</sup> *Johnson*, 50 P.3d at 406.

<sup>255</sup> *See Montgomery*, 577 U.S. at 208-10.



heightened capacity for reform.<sup>256</sup> Scientific evidence has shown the difference in juveniles from adults. Not only scientific evidence, but society has recognized and accepted that minors are less mature than adults, making them unable to understand and appreciate the future repercussions of their actions.<sup>257</sup>

First, it is well established among courts that scientific evidence shows juveniles are less mature than adults.<sup>258</sup> Acknowledging this, courts have often relied upon this scientific evidence when sentencing juveniles.<sup>259</sup> For example, in determining a sentence for one convicted of a crime in New Jersey, the Superior Court uses a calculus that considers many factors to determine a reasonable sentence for an offender.<sup>260</sup> Specifically, in fashioning a sentence, courts may consider—in mitigation of the sentence—whether “[t]he defendant was under 26 years of age at the time of the commission of the offense.”<sup>261</sup> Similarly, federal district courts also consider youthfulness in determining an appropriate sentence for an offender.<sup>262</sup> After calculating the appropriate guideline range for a defendant and ruling on any departure motions, federal courts

---

<sup>256</sup> *Id.*

<sup>257</sup> AM. BAR ASSOC., *Factsheet: The Juvenile Death Penalty*, OFF. OF JUST. PROGRAMS, U.S. DEP’T OF JUST., <http://oak.cats.ohiou.edu/~rm273001/Juvenile.pdf> (“The law prohibits persons under the age of 18 from voting, serving on the military, and purchasing tobacco products because adolescents are less mature than adults. [] Of all offenders, adolescents are the most capable of rehabilitation given their youth, immaturity, and potential for growth.”) (last visited Mar. 30, 2023).

<sup>258</sup> *Roper*, 543 U.S. at 573 (“It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” (citation omitted)).

<sup>259</sup> *Montgomery*, 577 U.S. at 206 (holding that “children are constitutionally different from adults for purposes of sentencing”); *Miller*, 567 U.S. at 472 (“*Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because “[t]he heart of the retribution rationale” relates to an offender’s blameworthiness, “the case for retribution is not as strong with a minor as with an adult.” (quoting *Graham v. Florida*, 560 U.S. 48, 71 (2010), as modified (July 6, 2010))).

<sup>260</sup> N.J. STAT. ANN. § 2C:44-1.

<sup>261</sup> *Id.*

<sup>262</sup> After *United States v. Booker*, 543 U.S. 220 (2005), sentencing involves a three-step process: (1) “[c]ourts must continue to calculate a defendant’s Guidelines sentence precisely as they would have before *Booker*”; (2) courts “must formally rule on the [departure] motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation”; and (3) courts “are required to exercise their discretion by considering the relevant [18 U.S.C.] § 3553(a) factors in setting the sentence they impose.” *United States v. Gunter*, 462 F.3d 237, 247 (3d Cir. 2006) (alterations, citations, and internal quotation marks omitted) (quoted in *United States v. Flores-Mejia*, 759 F.3d 253, 256 (3d Cir. 2014)).

“are required to exercise their discretion by considering the relevant 18 U.S.C. § 3553(a) factors in setting their sentences, regardless of whether it varies from the original calculation.”<sup>263</sup> The court is then permitted to vary downwards on the guidelines, bringing the guideline range of imprisonment level to a lower range of imprisonment based on the offense level.<sup>264</sup> Factors that federal courts consider in evaluating whether a downward variance of the offense level under 18 U.S.C. § 3553(a) is warranted include but are not limited to the following: age, lack of youthful guidance, mental and emotional condition, and diminished capacity.<sup>265</sup>

The U.S. Supreme Court has also weighed in on the sentencing of juvenile offenders. In 2005, the Court held that juveniles are not subject to the death penalty because it is cruel and unusual punishment, which violates the Eighth and Fourteenth Amendments.<sup>266</sup> The *Roper* decision was the third decision to reach the Supreme Court addressing the death penalty for juvenile offenders in a twenty-year span.<sup>267</sup> In its opinion, the Court stated that “[t]hree general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.”<sup>268</sup> First, “[j]uveniles’ susceptibility to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’”<sup>269</sup> Second, juveniles struggle to find their own identity, which “means it is less supportable to conclude that even a heinous crime committed by a juvenile is

---

<sup>263</sup> *United States v. Fumo*, 655 F.3d 288, 329 (3d Cir. 2011).

<sup>264</sup> 18 U.S.C. § 3553(a).

<sup>265</sup> *See id.*

<sup>266</sup> *Roper*, 543 U.S. at 578.

<sup>267</sup> *Id.* (holding that the execution of juveniles under the age of eighteen at the time of their offense was cruel and unusual punishment and thus violates the Eighth and Fourteenth Amendments); *Stanford*, 492 U.S. at 380 (holding that execution of juvenile offenders sixteen and seventeen years old “does not offend the Eighth Amendment’s prohibition against cruel and unusual punishment”); *Thompson*, 487 U.S. at 838 (holding that the execution of juveniles who was sixteen at the time of their offense violates the Eighth and Fourteenth Amendments).

<sup>268</sup> *Roper*, 543 U.S. at 553.

<sup>269</sup> *Id.* (quoting *Thompson*, 487 U.S. at 835).

evidence of irretrievably depraved character.”<sup>270</sup> Lastly, “[o]nce juveniles’ diminished culpability is recognized, it is evident that neither of the two penological justifications for the death penalty—retribution and deterrence of capital crimes by prospective offenders . . . provides adequate justification for imposing that penalty on juveniles.”<sup>271</sup> Considering the juvenile court’s goal of rehabilitation, juveniles are rarely held to the same legal standards as adults because they are generally viewed as less mature and unaware of the consequences of their actions.<sup>272</sup>

Second, juveniles are seen as less culpable because they are vulnerable to peer pressure.<sup>273</sup> It is clear from social behaviors and scientific evidence that minors are subject to influences and pressures.<sup>274</sup> One under eighteen is more likely to be influenced to make decisions they would not otherwise have made compared to adult offenders.<sup>275</sup> Thus, a juvenile’s character “is not as well formed as that of an adult,” and their “personality traits . . . are more transitory, [and] less fixed.”<sup>276</sup> Since juveniles’ character is not as developed as adults, they should not face the same collateral consequences resulting from juvenile adjudications—crimes

---

<sup>270</sup> *Roper*, 543 U.S. at 553.

<sup>271</sup> *Id.*

<sup>272</sup> See N.J. STAT. ANN. § 2A:4A-26.1(f)(1). After the waiver of jurisdiction and when the prosecution obtains jurisdiction,

[t]he case shall proceed as if it originated in that court and shall be subject to the sentencing provisions available to that court; provided, however, upon conviction for any offense which is subject to waiver pursuant to paragraph (2) of subsection c. of this section, there shall be a presumption that the juvenile shall serve any custodial sentence imposed in a [s]tate juvenile facility operated by the Juvenile Justice Commission until the juvenile reaches the age of 21.

<sup>273</sup> *Roper*, 543 U.S. at 553.

<sup>274</sup> *Id.* (“Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.” (citing *Stanford*, 492 U.S. at 395)).

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* at 570 (citing E. Erikson, *Identity: Youth and Crisis* (1968)).

committed under the age of eighteen, and they lacked judgment, lacked self-identity, and were immature.<sup>277</sup>

Lastly, state legislatures have demonstrated by the treatment of juvenile offenders that society recognizes them as less culpable than adults. When a juvenile is deemed a “delinquent,” they are not considered a “criminal” by way of disposition.<sup>278</sup> Being that a disposition of “delinquent” does not “impose any of the civil disabilities ordinarily imposed by virtue of a criminal conviction,” it supports the notion that juveniles should not face collateral consequences from such adjudications.<sup>279</sup> However, when a juvenile is adjudicated a delinquent in New Jersey, the juvenile could still face collateral consequences, contradicting the purpose of the disposition. Even if a juvenile were adjudicated delinquent, they would not be eligible for expunction of certain crimes, ultimately imposing a “civil disability” upon them.<sup>280</sup>

### **1. The Issue of Wrongful Adjudications.**

Wrongful convictions are highly likely in juvenile proceedings.<sup>281</sup> States, therefore, should err on the side of providing expunction rights to juveniles because courts cannot rely one hundred percent on delinquent adjudications. A child’s mental capacity and lack of understanding may inevitably lead to a wrongful adjudication.<sup>282</sup> Several factors contribute to wrongful adjudications of juveniles: (1) false confessions within a custodial interrogation; (2) false pleas; (3) inadequate juvenile procedure rules; (4) lack of oversight of juvenile

---

<sup>277</sup> *See id.* (“From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.”).

<sup>278</sup> N.J. STAT. ANN. § 2A:4A-48.

<sup>279</sup> *Id.*

<sup>280</sup> N.J. STAT. ANN. § 2C:52-4.1(a)(1)-(3).

<sup>281</sup> *DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (“49% of the false confessors were 21 years old or younger at the time of arrest,” and “31% of the false confessors were 18 years old or younger at the time of arrest.”) (last visited Jan. 17, 2023).

<sup>282</sup> *See id.*

proceedings; and (5) ineffective assistance of counsel.<sup>283</sup> In the unfortunate circumstance of a wrongfully convicted juvenile whose conviction had not been overturned, the juvenile is limited in collateral relief they may obtain if any.<sup>284</sup> Collateral relief for all juvenile offenses will assist in mitigating the consequences resulting from juvenile adjudication of a delinquent.<sup>285</sup>

First, false confessions from juveniles are likely to lead to wrongful adjudication. An inherently coercive environment of custodial interrogation is more likely to overcome a juvenile's will than an adult's.<sup>286</sup> "False confessions are one of the leading causes of wrongful convictions."<sup>287</sup> The landmark 1966 Supreme Court decision of *Miranda v. Arizona*<sup>288</sup> established the prophylactic rule that requires police officers to give "Miranda" warnings to act as a procedural safeguard to protect against self-incrimination.<sup>289</sup> That is, police officers must "Mirandize" the suspects that are held for interrogation.<sup>290</sup> The individual being interrogated:

must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today. As with the warnings of the right to remain silent and that anything stated can be used in evidence against him, this warning is an absolute prerequisite to interrogation.<sup>291</sup>

More recently, in 2009, the Supreme Court stated, "there is mounting empirical evidence that these pressures [associated with custodial police interrogation] can induce a frighteningly

---

<sup>283</sup> Bluhm Legal Clinic, *Wrongful Convictions of Youth*, NE. PRITZKER SCHOOL OF LAW, <https://www.law.northwestern.edu/legalclinic/wrongfulconvictionsyouth/understandproblem/> (last visited Mar. 30, 2023).

<sup>284</sup> *Id.*

<sup>285</sup> *People v. Smith*, 470 N.W.2d 70, 75 (Mich. 1991) ("The purpose of the court rule [permitting the expungement of juvenile delinquency records], and of similar rules or statutes in other jurisdictions, is to prevent a juvenile record from becoming an obstacle to educational, social, or employment opportunities.").

<sup>286</sup> *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011).

<sup>287</sup> *Wrongful Convictions of Youth*, *supra* note 283.

<sup>288</sup> *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

<sup>289</sup> *Id.* (defining a custodial interrogation as questioning by "law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way").

<sup>290</sup> *Id.* at 498.

<sup>291</sup> *Id.* at 471.

high percentage of people to confess to crimes they never committed.”<sup>292</sup> Then, in 2012, the Supreme Court noted, “that [the] risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.”<sup>293</sup> As a result, an officer must consider the individual’s age when determining whether he or she is in custody and, ultimately, whether the individual must be *Mirandized*.<sup>294</sup> A child’s age, therefore, relates to the extent it informs the custody analysis.<sup>295</sup> The Court also emphasized the long-standing principle that the law recognizes that “children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”<sup>296</sup> To provide further support, the Court also articulated that “[l]egal disqualifications on children as a class—e.g., limitations on their ability to marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.”<sup>297</sup>

Studies have also shown that juvenile offenders are likely to be wrongfully convicted.<sup>298</sup> An empirical study by the Innocence Project, a non-profit legal organization committed to exonerating wrongfully convicted persons, found that twenty-nine percent of exonerations involved false confessions.<sup>299</sup> Of the twenty-nine percent, thirty-one percent of the false confessions involved a juvenile eighteen years or younger at the time of the arrest.<sup>300</sup> Also, forty-nine percent of the confessions involved persons twenty-one years or younger at the time of the arrest.<sup>301</sup> A more recent study by the National Registry of Exonerations in April 2022 showed

---

<sup>292</sup> *Corley v. United States*, 556 U.S. 303, 321 (2009).

<sup>293</sup> *J.D.B.*, 564 U.S. at 269.

<sup>294</sup> *Id.* at 280-81.

<sup>295</sup> *Id.*

<sup>296</sup> *J.D.B.*, 564 U.S. at 273.

<sup>297</sup> *Id.*

<sup>298</sup> *DNA Exonerations in the United States*, *supra* note 281.

<sup>299</sup> *DNA Exonerations in the United States*, *supra* note 281.

<sup>300</sup> *DNA Exonerations in the United States*, *supra* note 281.

<sup>301</sup> *DNA Exonerations in the United States*, *supra* note 281.

that thirty-four percent of persons under eighteen falsely confessed, resulting in exoneration.<sup>302</sup> In comparison, only ten percent of exonerated adults falsely confessed.<sup>303</sup> The breakdown of the thirty-four percent of persons under eighteen that falsely confessed and were exonerated is as follows: twenty-seven were between sixteen and seventeen years old, fifty-four percent were between ages fourteen and fifteen, and seventy-eight percent were under the age of fourteen.<sup>304</sup>

Before moving on to the lack of oversight of juvenile proceedings, let us consider a thought experiment similar to the robbery example at the beginning of this Article.<sup>305</sup> Here, a thirteen-year-old named “Johnny” is falsely arrested for a second-degree robbery charge. After

---

<sup>302</sup> *Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess*, NAT’L REGISTRY OF EXONERATIONS (Apr. 18, 2022), <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20FINAL%20CHART.pdf>.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> For another example, consider the following thought experiment:

Picture yourself as a thirteen-year-old boy, sitting in your middle school in the midst of class. Without warning, your principal enters your classroom, tells you to come with him, and brings you to a small room in the school’s front office. There, three police officers—each wearing a holstered gun—are waiting for you. One officer leaves the room and closes the door behind him, but the detective, the sergeant, and the principal remain in the room with you. They sit you down. They surround you.

The detective reads you the *Miranda* rights and immediately proceeds to accuse you of inappropriately touching your neighbor’s three-year-old sister. She does not ask if you did this. Instead, she says that she knows you did this; she has no doubt of your guilt because the evidence proves it; and now you just need to help yourself by telling her the truth. (In reality, this detective has no evidence; she has not conducted any investigation and has no reliable reason to presume your guilt.)

Shocked, you respond by stammering out the truth: you did not inappropriately touch that little girl. In fact, you say this over ten times. The detective refuses to listen and tells you that if you take a lie detector test, it will “come back deceptive because you’re lying.” Her accusations become increasingly specific and more detailed, providing you with her exact theory about how the alleged crime occurred.

When you start crying, she tells you that the only way you can help yourself is to confess. She offers that you probably touched the little girl for reasons that are completely “understandable”—maybe you were just “curious”—but if not, then you must have done it for a less understandable reason: touching her “excited” you. If you were just curious, she says, you should say so now in order to “get this over with so we can get you the help you need.” She emphasizes that you “need help” and “the best thing for you right now is to be honest.” She makes clear that if you don’t confess, on the other hand, it will look as though you targeted the little girl out of a more sinister desire for sexual gratification.

Megan Crane, Laura Nirider & Steven A. Drizin, *The Truth About Juvenile False Confessions*, PRISON POL’Y INITIATIVE, 10 (2016), [https://www.prisonpolicy.org/scans/aba/Juvenile\\_confessions.pdf](https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf).

the police officers arrest Johnny, officers read Johnny his *Miranda* rights. Johnny is then driven to the police station. At the police station, Johnny is put in an interrogation room until the police officers can contact his parents. Johnny is afraid and will do anything to be released from the police station. Not understanding the *Miranda* rights or procedure of the juvenile system, Johnny elicits a false confession to be released from custody. At a juvenile delinquency hearing, the court adjudges Johnny guilty of an offense he did not commit based on the false confession. As a result, Johnny's delinquent adjudication appears on his criminal record for the rest of his life. Similar to the robbery example, this hypothetical demonstrates the unfairness to juveniles and the lack of collateral relief remedies. This simple process can inadvertently destroy a person's life due to a lack of understanding and the unavailability of remedies to remove the delinquency adjudication. Under the present expungement law, an ex-juvenile offender in New Jersey has one chance—for specific offenses—of having a lifetime criminal record, attaching collateral consequences.

The lack of oversight of juvenile proceedings makes wrongful adjudications likely to go unnoticed, inevitably leading to collateral consequences.<sup>306</sup> Juvenile proceedings are not typically open to the public, giving rise to a higher level of abuse.<sup>307</sup> In adult proceedings, media coverage is usually the body that unveils any injustices or deficiencies in the rulings by the judge.<sup>308</sup> But, in a system where the public may not observe and documents are restricted for the

---

<sup>306</sup> Michael Stechschulte, *Vulnerable and Disadvantaged: Juveniles Suffering Wrongful Adjudications Are Frequently Deprived of Collateral Relief*, 55 No. 6 CRIM. LAW BULLETIN ART 4 (2019) (“Since the secrecy around juvenile proceedings renders public oversight effectively impossible, juveniles are forced to rely solely on practitioners and bar committees.”).

<sup>307</sup> *Id.*

<sup>308</sup> See, e.g., Rachel E. Barkow, *Organizational Guidelines for Prosecutor's Office*, 31 CARDOZO L. REV. 2089, 2093 (2010).



parties, it is nearly impossible for media outlets to understand what is occurring within the juvenile hearings and their dockets, including any injustices.<sup>309</sup>

Inadequate representation may also lead to delinquent adjudications and ineffective assistance of counsel claims.<sup>310</sup> The U.S. Supreme Court in 2010 held that a lawyer’s failure to advise<sup>311</sup> a non-citizen client of potential immigration consequences of a guilty plea could result in deportation is grounds to establish ineffective assistance of counsel claim.<sup>312</sup> The Supreme Court, however, has yet to establish a legal requirement on courts or attorneys that juveniles or their parents be informed of potential future collateral consequences of delinquency adjudications.

Criminal procedures disregard the vulnerability and susceptibility of juveniles. “The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment.”<sup>313</sup> Similarly, the limited nature of “procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures.”<sup>314</sup> The departure from traditional “principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.”<sup>315</sup> Although juvenile proceedings often result in the disposition of “delinquent,” juveniles still experience criminal processes or legal equivalents such as arrests, custodial interrogations, discovery, and the like. Nonetheless,

---

<sup>309</sup> *Vulnerable and Disadvantaged: Juveniles Suffering Wrongful Adjudications Are Frequently Deprived of Collateral Relief*, *supra* note 306.

<sup>310</sup> *Wrongful Convictions of Youth*, *supra* note 283.

<sup>311</sup> *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (“When the law is not succinct and straightforward . . . a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences.”).

<sup>312</sup> The Sixth Amendment provides the right in all *criminal cases* to the effective assistance of counsel. U.S. CONST. AMEND. VI. The Supreme Court in *Padilla* did not state that deportation was a criminal punishment; rather, the court defined it as a “particularly severe ‘penalty’” that is “intimately related to the criminal process.” *Padilla*, 559 U.S. at 365.

<sup>313</sup> *Gault*, 387 U.S. at 18-19.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

many states lack access to post-conviction relief for juveniles, and the ability for ex-juvenile offenders to reopen cases as adults.<sup>316</sup>

## **2. The Minority Community Mostly Suffers from the Stigmatizing and Detrimental Impact of a Juvenile Record.**

Minorities suffer the most from collateral consequences resulting from juvenile adjudications.<sup>317</sup> To give an idea, a January 13, 2023 report issued by the New Jersey Office of the Attorney General Juvenile Justice Commission outlined the demographics and statistics of juveniles within the criminal justice system.<sup>318</sup> Of the 107 juveniles committed,<sup>319</sup> 104 were male, and three were female.<sup>320</sup> Of the 104 males, seventy-eight (75%) were black, twenty (19.23%) were Hispanic, five (4.81%) were white, and one (0.96%) fell in the other category.<sup>321</sup> The number of minorities waived to adult court also was high: thirty-two black men, twenty-five Hispanic men, eleven white men, and one “other” were waived to adult court.<sup>322</sup>

Now, consider the impact after the juvenile case is closed and the juvenile is no longer in the state’s custody. This assumes that the juvenile offenses adjudicated delinquent are ineligible for expungement. With limited collateral relief, minority offenders are disproportionately likely to face collateral consequences. Statistics indicate that seventy-five percent of blacks and about nineteen percent of Hispanics are likely to face these consequences.

---

<sup>316</sup> *Wrongful Convictions of Youth*, *supra* note 283.

<sup>317</sup> Edwin Grimsley, *Lessons About Black Youth and Wrongful Convictions: Three Things You Should Know*, INNOCENCE PROJECT (May 1, 2015), <https://innocenceproject.org/lessons-about-black-youth-and-wrongful-convictions-three-things-you-should-know-2/>.

<sup>318</sup> *Juvenile Demographics and Statistics*, NJ OFF. OF THE ATT’Y GEN. JUV. JUST. COMM’N (Jan. 13, 2023), <https://www.nj.gov/oag/jjc/stats/2023-0113-Juvenile-Demographics-and-Stats.pdf>.

<sup>319</sup> N.J. STAT. ANN. § 2A:4A-22(e) (“‘Commit’ means to transfer legal custody to an institution.”).

<sup>320</sup> *Juvenile Demographics and Statistics*, *supra* note 318.

<sup>321</sup> *Juvenile Demographics and Statistics*, *supra* note 318.

<sup>322</sup> *Juvenile Demographics and Statistics*, *supra* note 318.

Juveniles are also generally sentenced in high numbers in urban areas.<sup>323</sup> For example, consider the following urban areas in New Jersey: in Camden County,<sup>324</sup> about twenty-eight percent of male juveniles were sentenced; in Essex County, about nineteen percent of male juveniles were sentenced; and, in Passaic County, about eleven percent of male juveniles were sentenced.<sup>325</sup> As a result, this inevitably leads to a restriction on the juvenile’s social mobility. The ex-juvenile offenders become a “product of their society” because the opportunities available to a juvenile are limited due to delinquent adjudications and lack of access to collateral relief. Specifically, some of those opportunities consist of student loans, employment, housing, and many rights. The ex-juvenile offender will face collateral consequences for the remainder of their life regarding their career trajectory, where they live, and what rights they have because of an adjudication committed when their brain was not fully developed. Or, to make matters worse, the wrongfully adjudicated delinquent that goes unnoticed is restricted for the rest of their life when they were not the person who committed the offense.

As demonstrated by researchers, there is no sole path to delinquency; instead, several factors will increase a youth’s likelihood of offending.<sup>326</sup> Below is a table of risk factors that evaluates a juvenile’s likelihood of offending.

<b>Risk and Protective Factors, by Domain</b> <sup>327</sup>			
<b>Domain</b>	<b>Risk Factor</b>		<b>Protective Factor*</b>
	<b>Early Onset (ages 6–11)</b>	<b>Late Onset (ages 12–14)</b>	

<sup>323</sup> See, e.g., *The Poorest City in the Nation is Camden, NJ*, PBS: METROFOCUS (Sept. 21, 2012, 7:21 PM), <https://www.thirteen.org/metrofocus/2012/09/the-poorest-city-in-the-nation-is-camden-nj/>.

<sup>324</sup> *Id.*

<sup>325</sup> *Juvenile Demographics and Statistics*, *supra* note 318.

<sup>326</sup> Michael Shader, *Risk Factors for Delinquency: An Overview*, NAT’L CTR. FOR JUV. JUST., U.S. DEP’T OF JUST., at 4, <https://www.ojp.gov/pdffiles1/ojjdp/frd030127.pdf> (last visited Apr. 10, 2023).

<sup>327</sup> *Id.*

Individual	General offenses Substance use Being male Aggression** Hyperactivity Problem (antisocial) behavior Exposure to television violence Medical, physical problems Low IQ Antisocial attitudes, beliefs Dishonesty**	General offenses Restlessness Difficulty concentrating** Risk taking Aggression** Being male Physical violence Antisocial attitudes, beliefs Crimes against persons Problem (antisocial) behavior Low IQ Substance use	Intolerant attitude toward deviance High IQ Being female Positive social orientation Perceived sanctions for transgressions
Family	Low socioeconomic status/poverty Antisocial parents Poor parent-child relationship Harsh, lax, or inconsistent discipline Broken home Separation from parents Other conditions Abusive parents Neglect	Poor parent-child relationship Harsh or lax discipline Poor monitoring, supervision Low parental involvement Antisocial parents Broken home Low socioeconomic status/poverty Abusive parents Family conflict**	Warm, supportive relationships with parents or other adults Parents' positive evaluation of peers Parental monitoring
School	Poor attitude, performance	Poor attitude, performance Academic failure	Commitment to school Recognition for involvement in conventional activities
Peer group	Weak social ties Antisocial peers	Weak social ties Antisocial, delinquent peers Gang membership	Friends who engage in conventional behavior
Community		Neighborhood crime, drugs Neighborhood disorganization	
<p>* Age of onset not known. ** Males only.</p> <p>Source: Adapted from Office of the Surgeon General, 2001.</p>			

The “risk factors” are “those characteristics, variables, or hazards that, if present for a given individual, make it more likely that this individual, rather than someone selected from the

general population, will develop a disorder.”<sup>328</sup> As demonstrated by the table provided by the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention, a breakdown in the familial relationship, poor school performance, involvement with delinquent peers, and living in an urban environment are likely to increase the juvenile’s likelihood of offending. This Article considers the risk factors in the chart above when providing an alternative recommendation of discretionary relief of expunction for juvenile offenders.

**B. From a Doctrinal Perspective: the Current Interpretation of New Jersey’s Expungement Statute Contradicts the Remedial and Rehabilitative Goal.**

Courts should have discretion in ordering expungement for juveniles who commit a crime under the age of eighteen. Restricting the expungement statute to the same or similar offenses for juveniles and adults contradicts the remedial goal of the juvenile justice system. To afford a discretionary alternative would further support the Code and reasonably provide juveniles with an opportunity to mature and demonstrate rehabilitation.

**1. New Jersey’s Legislature Should Replace the Statutory Expungement Bar with a Discretionary Alternative.**

An amendment to the expungement statute allowing for discretionary relief comports with the Code’s purpose to be “[c]onsistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public.”<sup>329</sup> The Code emphasizes the effect of a juvenile delinquency disposition by indicating the following:

No disposition under this act shall operate to impose any of the civil disabilities ordinarily imposed by virtue of a criminal conviction, nor shall a juvenile be deemed a criminal by reason of such disposition.

---

<sup>328</sup> *Id.*

<sup>329</sup> N.J. STAT. ANN. § 2A:4A-21.

The disposition of a case under this act shall not be admissible against the juvenile in any criminal or penal case or proceeding in any other court except for consideration in sentencing, or as otherwise provided by law.<sup>330</sup>

Notwithstanding the effect of a juvenile adjudication, it is also vital to consider the purpose of the expungement statute. As previously outlined, the expungement statute must be construed in compliance with the “primary objective of providing relief to the reformed offender who has led a life of rectitude and disassociated himself with unlawful activity.”<sup>331</sup> The “fundamental differences between juveniles and adult minds,” “proclivity for risk, and inability to assess consequences—both lessen[s] a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, [their] ‘deficiencies will be reformed.’”<sup>332</sup>

To be consistent with the Code’s rehabilitation goal and the expungement statute’s remedial goal, courts should balance several factors in determining whether expungement of an ineligible expungement of juvenile delinquency adjudication is warranted. None of the factors should be dispositive, but courts should give some factors greater weight than others. When seeking expunction with the newly proposed balancing scale, the initial burden should be on the petitioner to allege specific facts demonstrating that they have successfully rehabilitated. The burden will then shift to the state to provide clear and convincing evidence that the petitioner has not rehabilitated and that it is not in the public’s interest to grant the expungement.

The proposed balancing scale invites the question of what the factors ought to be. Some factors that should be considered are the: (1) nature of the juvenile proceedings; (2) history and characteristics of the petitioner; (3) unwarranted consequences of juvenile adjudications affecting

---

<sup>330</sup> § 2A:4A-48.

<sup>331</sup> N.J. STAT. ANN. § 2C:52-32.

<sup>332</sup> *Miller*, 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 68).

the petitioner’s future; (4) societal need for awareness of juvenile adjudication; (5) goal of the Juvenile Code of Justice; and (6) impact of victims, if necessary.<sup>333</sup> The petitioner should be afforded the opportunity to have a hearing if requested. At the hearing, courts must determine whether the juvenile has successfully rehabilitated. It, therefore, is not enough for the New Jersey Superior Court to indicate on the record that they have considered them; instead, the judge should thoroughly review each factor. This Article will address each of the proposed factors to provide a further understanding and provide further guidance on how the court should review the petitioner’s request to expunge juvenile records when evaluating the factors.

The first factor is the *nature of the juvenile proceedings*. The court should evaluate the nature of the seriousness and timing of juvenile adjudications. Some questions to help guide the analysis are (1) whether the adjudication was a crime of violence, (2) the juvenile’s role in the offense; (3) the youthfulness at the time of the crime, (4) the timing of the offense; and (5) if multiple offenses, whether they occurred within the same period. Although one factor is not dispositive, giving greater weight to the timing of the offense would support rehabilitation—the purpose of the juvenile courts—if the offense occurred long ago with no new interaction with the criminal system. An ex-juvenile offender adjudicated a delinquent ten years ago should provide more support for expungement. Providing greater weight to the nature of the juvenile proceedings supports New Jersey’s current expungement statute purpose. It provides “relief to the reformed offender who has led a life of rectitude and disassociated himself with unlawful activity.”<sup>334</sup>

---

<sup>333</sup> ARIZ. REV. STAT. ANN. § 8-348(C)(1)-(5) (providing a similar set of factors in ascertaining whether the court should set-aside juvenile adjudications).

<sup>334</sup> *D.J.B.*, 83 A.3d at 6 (citing N.J. STAT. ANN. § 2C:52-32); *Kollman*, 46 A.3d at 1254.

The second factor courts should consider is the *history and characteristics of the petitioner*. When evaluating the history and characteristics of the petitioner, courts should consider the familial, mental, emotional, and personal circumstances. The personal characteristics of the offender will help inform the analysis. The personal characteristics explore the age when the offense was committed compared to their current age, hometown, educational background, and other relevant factors. Evaluating the *family dynamic* lets the court explore the parental guidance, support, services, financial and emotional support, and basic necessities afforded to the juvenile. Additionally, services provided to the juvenile may shed light on whether the “minor’s character deficiencies . . . reformed.”<sup>335</sup> Thus, if a petitioner lacked a two-parent household, it should be given greater deference in favor of expungement. Lack of a two-parent household facing poverty is highly likely to result in either inadequate supervision or lack of financial support, leading a juvenile to explore avenues. Emotional and physical health should also be considered when evaluating the history and characteristics of the petitioner. Other considerations such as whether the juvenile was introduced to drugs at a young age that may have influenced their decision, may be relevant when courts analyze the petitioner’s characteristics.

Third, courts should consider the *impact of juvenile adjudications on the petitioner’s projected future if the expungement of the juvenile records is not granted*. Like evaluating the history and characteristics of the petitioner, the court should evaluate the educational and employment trajectory of the petitioner. A juvenile adjudication for crimes one committed as a minor should not hinder the ex-offender from social mobility.

---

<sup>335</sup> See *Roper*, 543 U.S. at 570.



Fourth, *public awareness and the societal need for the juvenile's adjudication information* should be considered. The relevant inquiry becomes when and who needs to know about a particular crime. This factor must be balanced with the nature and circumstances of the underlying juvenile adjudication. Again, if significant time has passed with no subsequent offenses, it reduces the need to share the information with society and supports granting the expungement. This, however, must be a fact-specific inquiry. Thus, if the petitioner petitioned for expungement of a crime such as a robbery two years after the case was closed, it should be scrutinized to prevent the public from further crimes regarding the nature and circumstances of these crimes. However, if this occurred when the petitioner was young and had not been convicted of any other crimes ten or twenty years later, it would strongly support the remedial goal of the juvenile expunction. It, therefore, would not require as careful scrutinization.

Fifth, courts should consider the *policy goals of New Jersey's Code* when evaluating whether juvenile expungement is warranted. That said, the court should assess the petition with the purpose of seeking rehabilitation.

Last, the Court should consider the *impact of the victim(s), if any*, in determining whether expungement is warranted under the circumstances of a juvenile adjudication. After the court considers the totality of the circumstances alongside the public's interest, it should determine whether expungement is warranted. Thus, this proposed expungement "balancing" mechanism of the entirety of the circumstances supports the long-standing history and treatment of juveniles while also aligning with the goals of New Jersey's Code and expungement statute.

## **2. The Proposed Effective "Second Chance" Doctrine of Expungement as an Alternative Option.**

New Jersey's "clean slate expungement" fails to provide juveniles with a "clean slate." The "clean slate" section lets individuals seek expungement of one or more crimes after ten years

from the individual's most recent conviction.<sup>336</sup> The "clean slate" should also include a section addressing juvenile adjudications ineligible for expungement. The amendment would allow juveniles to seek expungement of their entire juvenile record—even ineligible felony offenses after ten years have passed, and the petitioner can show they have rehabilitated. A limitation of this proposed section is that the juvenile would be that a juvenile is not eligible for the "clean slate" if the juvenile committed any offenses after turning the age of eighteen. In theory, at the age of twenty-eight, an ex-juvenile offender would be eligible to petition for offenses otherwise ineligible for expungement.

### **III. Demonstrating the Effectiveness: the Proposed Solution of Allowing Discretionary Expungement for Crimes Committed as a Juvenile is Consistent with the Treatment and Understanding of Juveniles—Doctrinally, Scientifically, and Morally.**

Applying the proposed solution of a balancing system comports with the goals of the Code, the history and treatment of juveniles when committing crimes, and the scientific evidence surrounding a juvenile's mental capacity. Thus, the proposed amendment would let judges judge by balancing several factors rather than restricting the judge from granting expungement because of a statutory bar. To reiterate, the proposed amendment allows the judge to balance the following factors: (1) the nature of the juvenile proceedings; (2) the history and characteristics of the petitioner; (3) unwarranted consequences of juvenile adjudications affecting the petitioner's future; (4) societal need for awareness of juvenile adjudication; (5) goal of the Juvenile Code of Justice; and (6) impact of victims, if necessary. The petitioner will have the initial burden of alleging specific facts demonstrating rehabilitation from youthfulness. If the petitioner satisfies this burden, the burden will shift to the state to prove beyond a reasonable doubt that the

---

<sup>336</sup> N.J. STAT. ANN. § 2C:52-5.3.

petitioner has not successfully rehabilitated and that it is not in the public's interest to grant the expungement.

Considering the proposed amendments, let us consider a hypothetical. For example, fourteen-year-old Johnny committed the crime of second-degree robbery in New Jersey. Johnny grew up in a single-parent (maternal) household and a poverty-stricken, crime-ridden neighborhood. It was no secret to Johnny's classmates and teachers that he was immature and lacked guidance. Johnny's mother worked long hours to make ends meet. Because Johnny's mother worked an unpredictable schedule, Johnny could not engage in high school extracurricular activities. Thus, Johnny had only idle time. Johnny eventually hung with older individuals who preyed on Johnny's youth and were overall a bad influence. The lack of parental guidance and support was supplemented by older individuals who were bad influences. Because of the peer pressures faced by Johnny's "friends," and with no thought, he took the personal items of a classmate forcibly. The negative influences he met in the neighborhood ultimately encouraged taking the items.

Fast forward, Johnny is thirty years old and now a model citizen. Because of the one juvenile delinquency, Johnny instantly turned his life around for the better. It was an "eye-opening" experience for Johnny, and the services provided to rehabilitate him contributed to his success. From the disposition of Johnny's juvenile delinquency, until he turned thirty, he has not been convicted of any subsequent offenses, has completed his bachelor's and master's degree, often volunteers, is a member of various community organizations, and works full-time. Johnny seeks to expunge the one-off experience with the juvenile justice system.<sup>337</sup>

---

<sup>337</sup> Johnny has satisfied the initial burden of pleading specific facts to warrant expungement. The burden has now shifted to the state to prove by a preponderance of the evidence or beyond a reasonable doubt that Johnny has not rehabilitated and that it is not in the public's interest.

Let us consider each factor in turn. The first factor is the nature and circumstances of the juvenile adjudication. Johnny was in sixth grade when the offense occurred. The peer pressure endured by Johnny is clear. Johnny fell victim to his crime-ridden neighborhood. Older individuals took advantage of his age. It has been recognized that “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”<sup>338</sup> This is a prime example. However, the fact that the juvenile was a youth does not excuse the conduct. Instead, it shows that moral culpability is not similar to an adult. The youthfulness of the juvenile offense is self-explanatory based on the surrounding circumstances. Also, the petitioner has demonstrated a law-abiding life for the past sixteen years. The petitioner has reformed in some way by “living a “life of rectitude and disassociating himself with unlawful activity,”<sup>339</sup> which supports the petitioner’s request for expungement and the goal of New Jersey’s expungement statute.

The second factor of the history and characteristics of the petitioner supports expungement. The surrounding familial circumstances put Johnny in a tough position. Johnny lacks the parental support and guidance that a teenager needs because his mother works tirelessly to support him. As a result of lacking support and guidance, Johnny has turned to others—bad influences—to gain acceptance. The circumstances surrounding Johnny’s childhood, poverty, were beyond his control. Johnny’s mother worked to provide financial support for Johnny to the detriment of Johnny’s emotional support. Johnny became a product of his environment. But, Johnny turned his behaviors around and has been living a law-abiding life ever since the disposition. The services implemented as part of Johnny’s disposition in the juvenile case played an integral role in rehabilitating him. Johnny grew into a mature individual who now understands

---

<sup>338</sup> *Roper*, 543 U.S. at 569-70 (citing *Eddings*, 455 U.S. at 115).

<sup>339</sup> *D.J.B.*, 83 A.3d at 6 (citing § 2C:52-32).

the consequences of his actions. Johnny is now a college graduate who is often described as a model citizen.

As to the third factor, Johnny's employment opportunities are limited because of his juvenile delinquency record. Since the robbery adjudication is a felony offense, the juvenile record may be provided to agencies requesting it. As a college graduate with a master's degree and model citizen, Johnny will be denied employment involving children, law enforcement, judiciary, and many more. Compared to the one-off juvenile offense, the impact on Johnny's future employment trajectory and contribution to society support expungement.

Fourth, the court should consider the public's interest in obtaining information related to the offense. There is no harm in restricting the public from accessing the information. The juvenile committed one offense in all of his juvenile years. It would be different if the juvenile committed several offenses throughout the juvenile years, demonstrating reluctance to rehabilitate and danger to society. Here, this is not the case. Johnny made a mistake due to a lack of youthful guidance and involvement with negative influences.

Lastly, New Jersey's expungement statute and juvenile Code support granting Johnny's expungement. The "primary objective of providing relief to the reformed offender who has led a life of rectitude and disassociated himself with unlawful activity."<sup>340</sup> The goal of the Code is that it be "consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public."<sup>341</sup>

---

<sup>340</sup> § 2C:52-32.

<sup>341</sup> N.J. STAT. ANN. § 2A:4A-21(b).

Here, we are dealing with presumably a reformed offender. Johnny has shown through his conduct that he has rehabilitated and will contribute to the community. Based on the one-off offense, it further supports that it occurred because of his immaturity and inability to understand the future consequences of his actions. Johnny's actions after the adjudication, therefore, comport with the goal of expungement of providing relief to a one-time offender and not to have a "system whereby periodic violators of the law . . . have a regular means of expunging their police and criminal records."<sup>342</sup> The expungement of Johnny's record further supports the goal of New Jersey's Code because substituting successful rehabilitation removes the "statutory consequences of criminal behavior." Services provided to Johnny reformed his actions, and he succeeded in rehabilitation. So, Johnny should not be subject to the collateral consequences imposed because of a criminal record.<sup>343</sup>

Courts should balance the totality of the circumstances surrounding the request for expungement. In doing so, it inevitably leads to one conclusion: the state cannot prove by a preponderance of the evidence that Johnny has not rehabilitated, and that it is not in the public's interest to grant expunction. Even if the court adopts a "beyond a reasonable doubt" standard, the state cannot satisfy it because it is a higher standard than "clear and convincing evidence."

### **Conclusion**

A second chance for ex-juvenile offenders is essential. Scientific evidence and society have demonstrated and accepted that juveniles are not the same as adults. As outlined in this Article, juveniles have been treated differently by courts because juveniles lack the capacity to appreciate the circumstances and consequences fully. The creation of juvenile courts demonstrates the need to treat juveniles differently—to rehabilitate juveniles, not punish them.

---

<sup>342</sup> *D.J.B.*, 83 A.3d at 6 (citing § 2C:52-32).

<sup>343</sup> § 2A:4A-21(b).

Deviant behavior that causes a juvenile to commit a crime hinges largely on the circumstances in the home. Juvenile courts, therefore, provide rehabilitation services to reform the juvenile offender.<sup>344</sup>

In adolescent years, juveniles are maturing, developing mentally, and growing physically. That said, children will be immature. Children are searching for self. Children are influenced by others. Children are developing judgment. Children do not fully understand the consequences of future actions. Juvenile delinquents must be treated differently from adults, from implementing dispositions to having collateral relief availability.

New Jersey enacted the Code “to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public.”<sup>345</sup> Also, juvenile courts were established—with rehabilitation as the goal—to prevent the juvenile from receiving the same collateral consequences an adult receives with a “conviction.”<sup>346</sup> Unfortunately, over the years, it has done the exact opposite. Juveniles cannot expunge the same offenses despite being committed when they lacked maturity, responsibility, awareness, and individualism. Unlike an adult, “it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”<sup>347</sup>

An amendment to New Jersey’s expungement statute will provide a fair and reasonable solution to this problem. The proposed amendment of balancing an enumerated list of factors provides a just result because it allows the individual to demonstrate that they have reformed.

---

<sup>344</sup> *Miller*, 567 U.S. at 472.

<sup>345</sup> § 2A:4A-21(b).

<sup>346</sup> § 2A:4A-21.

<sup>347</sup> *Roper*, 543 U.S. at 569-70.

Under the current law, the court cannot even consider whether the juvenile offender was rehabilitated.<sup>348</sup> Instead, if the court determines if the offense is listed under ineligible offenses, it does not look any further.<sup>349</sup> Putting aside the issue of wrongful adjudications, even if the juvenile committed the offense, the juvenile will remain with the delinquency record, attaching collateral consequences. The proposed solution is reasonable because it allows the court to explore the circumstances of the offense and the juvenile's home environment. The proposed solution is not suggesting that all juvenile offenses should be expunged; rather, the reformed offender should be able to demonstrate so. As it will still be the court's discretion, the court will still be permitted to deny the expunction request if it is not in the public's interest or if the prosecution establishes by a preponderance of the evidence that the offender has not rehabilitated. If the expunction is granted, the juvenile would have a second chance without a lifetime haunting stigma and unintentional lack of collateral consequences.

The proposed amendment to incorporate a discretionary juvenile subsection supports the treatment of juveniles in the criminal justice system and New Jersey's expungement statute. As the juvenile justice system tries to rehabilitate the minor, a provision that provides juveniles to remove their previous criminal record would follow the goal of rehabilitating an individual.<sup>350</sup> A system cannot rehabilitate an individual while failing to remove the collateral consequences of juvenile adjudications. Juveniles have been treated differently from adults by the U.S. Supreme Court; therefore, an amendment to permit expunction for juvenile offenders despite being charged (or waived) as an adult supports long-established Supreme Court cases, legislative history, and societal norms.

---

<sup>348</sup> § 2C:52-4.

<sup>349</sup> §§ 2C:52-7, -8.

<sup>350</sup> *W. J. A.*, 412 A.2d at 1358.